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INSTITVTIONS

OR

Principall grounds of the Lawes and Statutes of Englande.

Newly and verie truly corrected & amended, vvith *many new and good additions, very profitable for all sorts of people to know, lately augmented* and imprinted.

Imprinted by the widdowe *VValde-graue*.

Anno 1604.

The Prologue of the Author to the Reader.

Emosthenes the renouned Oratour, defineth Lawe in this wise. The Lawe (saith hee) is the thinge that all men ought to obey for manye causes but especially because Lawe is the inuention, & also the guift of God, the decrees of prudent men, the chastisment of offences, & finally the common suertie of a Realme, whereby it becommeth all men to liue, which bee conuersant in the same, *Chrysippus* also, an excellent Philosopher thus beginneth his booke of lawes. The Lawe is King of all, as wel deuine as humaine affayres, the president and controuler of things honest and dishonest, the Prince, the Captaine and ruler of the iust and vniuste, and it is of ciuill creatures, as well the commaunder what they ought to doe as the forbidder, what they ought not to doe. These authenticke sayings of wise men, assuredly ought much to inflame vs to the knowledge of those things without which wee shall be esteemed as no men but as bruite & sauage beastes. Let vs not commit that, that it be saide of Englishmen as it was once saide of the men of Athens, that is, that we make very good and profitable lawes, but wee vse them not. Certainly there can bee no greater reproch to a common weale, then this. One lesson I would wee learned of the ancient Romaine Lawyer named *Celsus*, and that is this: the knowledge of lawe is not to beare awaye the wordes, but the pith and power of them. This is written because their bee manye which when

good and wholesome lawes bee made, seeke not to se them executed, and obserued, but rather howe to defraude them & to haue them vnexecuted, which kinde of people after the sentence of most auncient lawmakers bee no lesse worthie of reprehension then they which doe expresly against the lawe. Nowe they doe (say they) against the law, which doe the thinge that the law forbiddeth. And they defraude a Lawe or Statute, which the wordes of the lawe saued, doe peruert the meaning and sentence of it.

Let vs then so read the law that wee maye beare away the sence and meaning of them, and so fullfill & obserue the lawes, that it maye appeare that they were not made in vaine. Thus doing wee shall please God, we shall bee obedient subiectes to our Prince. And finally we shall seeke our owne weale and safetie.

What

What is Law. Chap. 1.

THE lawe is the direction and miniſtration of Iuſtice. And Iuſtice is (as the Emperour *Iuſtinian* ſaith in his Inſtitutions) a conſtant and permanent will to render vnto euery perſon his right and dutie. The learning or prudence of law, is a knowledge of diuine and humaine thinges, a ſcience and perfect notice of equitie, and iniquitie, of right or wrong.

Now for aſmuch as a great portion of the prudence, of ſcienee of the lawes of this realme of England conſiſteth in the perfite knowledge of eſtates, which men haue in lands and tenements, we ſhall firſt as compendiouſly, and as ſimply and plainly as we can, treate ſomewhat of eſtates.

A diuiſion of Eſtates. Chap. 2.

YE ſhall therefore vnderſtand, that whoſoeuer hath any eſtate in lands or tenements, either he hath in the ſame onely a chattel, or a free hold, or an inheritãce. If he hath an eſtate but for tearme of certaine yeares, or at his landlords will, then it is cal- Chattell.

led

led a chattell, if for tearme of his life, or for any other mans life, it is called a free holde. And if hee hath to him and to his heires in fee simple or in taile, then he hath an estate of inheritance.

Freehold.

Inheritance.

Tenant for tearme of yeares. Chap. 3.

TEnant for tearme of yeares, is hee to whome landes or tenements be let for tearme of certaine yeares as is agreed betweene the landlord and the tenant. And when the person to whome such lease is made, doth enter by force of the said lease, and is in possession of the same: then hee is called a tenant for tearme of yeares.

Rent reserued

And heere ye shall note, that if the lessour that made the lease, hath reserued vnto him a yearly rent vpon the said lease, as it is accustomably vsed to be done, if the rent bee behinde and vnpaid, it shalbe in his election, either to enter and distraine for the rent or to bring an action of Det against the tenant for the arrerages of the same. But in this case it is requisite, that the lessour were seased of the lands or tenements at the time of the makeing of the lease, for otherwise it shalbe a good plee in the action of det for the tenant, to say the lessour had nothing in the landes and tenements at the time of the lease

Action of Det.

A good plee

leaſe made, except the leaſe were made by deed indented, for then the plee ſhall not lie in the tenants mouth to plead.

Liuery of ſeaſon needeth not in a leaſe for terme of yeares.

And it is to be knowen, that in a leaſe for tearme of yeares, whether it be by deed or without deede, there need no liuerie of ſeaſon to be made to the leſſe, but he may enter when he will by vertue of his leaſe without any further ceremony of the law.

And if a man leaſeth lands for tearme of yeares, though the leſſour chanceth to die before the leſſe doth enter, yet he may enter well enough. Otherwiſe it is where liuerie of ſeaſon is to be made, as in free holds and inheritances.

Waſte

Alſo if the tenant for yeares doth waſte, the landlord may bring an action of waſte againſt him, & ſhall recouer the place waſted, and his treble damages.

Alſo if a leaſe for yeares be made of two ſeuerall thinges and after the one is recouered the leſſe ſhall hold the other, & the rent or ferme ſhalbe apporcioned. *M.* 12. *H.* 8.

Forfaiture.

Alſo if the tenant for yeares graunteth a greater eſtate in the land, then he hath himſelfe whereby he conueyeth the fee ſimple to himſelf he ſhall forfait his leaſe or tearme.

Tenant at will. Chap. 2.

TEnant at will, is he, to whome lands or tenements be leased to haue & to hold the same at the will of the lessour. And in this case the lessour may put out his tenant at what time he listeth. But yet neuertheles if the tenant haue sowed the groundes with Corne, in this case if the lessour will enter and put out his tenant before harueſt, the law will giue him free comming and going to reape and carrie his corne away, without any punishment or damages to be sustained for his so doing, because hee knew not at what time the lessour would enter. But otherwise it is of tenant for tearme of certain yeares, for if he soweth the ground, and his tearme of the lease be come out and expire before the corne be ripe, in this case the lessour, or he in the reuersion may enter and take the corne because it was the folly of the tenant to sow the ground, knowing the end of his tearme.

In likewise, tenant at will shall haue free comming & going after the time of the lessoures entrie, to carie away his housholde stuffe and goods for a reasonable space.

Distres or action of det.

Ye shall also vnderstand, that he that maketh a lease at will, may receiue an annuall or yearely rent, in which case if the rent be behinde

behind, he may enter verie well & distraine the goods and chattels of the tenant, or at his election he may bring an action of det against him.

Also it is to bee knowen, that tenant at will of a house or tenement, is not bounde by the order of the law to sustaine & repaire the houses that be decaied and ruinous, as is the tenant for yeares, and therefore no action of waste lieth against him: yet if he will doe wilfull waste, as if hee plucketh downe the houses, or cutteth downe the trees: it hath bene thought by the sages of the law, that the lessour may bring an action of trespasse against him, & shall recouer his losses thereby sustained. Waste. Trespasse.

And if such a tenant die, and his heire enter, in that case, the lessour may haue an action of trespas against the heir for his entry.

Tenant by coppie of Courtroll. Chap. 5.

THere is a nother kind of tenant at wil, which is called tenant by coppy of the court Rolles. And that is when a man is seased of a mannour, within which it hath bene vsed time out of minde, that the tenantes within the boundes and precinct of the said manour, haue holden lands and tenements

to

to them and to their heires in fee ſimple, fee taile, or for tearme of life, at the will of the Lord according to the cuſtome of the manor. And ſuch a tenant cannot alien or ſell his land by his deed, for if he doe, the lande or tenement that is ſo alienated and ſold, is forfait into the Lords hands, but if he will alien his coppihold lande to a nother, hee must according to the cuſtome, come into the Lords court, and there ſurrender it into the Lords hand, to the behoofe & vſe of him that ſhall haue the eſtate. The forme of which ſurrender is commonly vſed to bee thus.

Surrender.

The forme of a ſurrender

Ad hanc curiam venit. A. de. B. & ſurſum reddidit in eadem curia vnum meſſuagium, &c. in manus domini, ad vſum. C. de D. & heredum ſuorum vel heredum de corpore &c. Et ſuper hoc venit predictus C. de D. & cepit de domino in eadem curia meſſuagium predictum, habendum & tenendum ſibi, &c. ad voluntatem domini ſecundum conſuetudinem manerij, faciend, inde redditus ſeruitia, & cõſuetudines inde prius debitas & cõſuetas, &c. Et dat domino pro fine, &c. & fecit domino fidelitatem.

Theſe as I ſaid be called tenants by copy of courtrole, becauſe they haue non other euidence to ſhew cõcerning their lands, ſaue only the copies of the roles of their L. court.

Ney-

Neither can theſe tenants ſue or be ſued for ſuch lands, in the Kings court, by writ or otherwiſe, but if they will in any wiſe impleade or ſue others for ſuch coppy landes, they muſt doe it by way of plainte in the Lords court after this ſort.

A. de B. queritur verſus C. de D. de placito terræ videlicet de vno meſſuagio xl. acris terræ, 4. acris prati, &c. cum pertinentijs, & facit proteſtationem ſequi querelam iſtam in natura breuis qui regis aſſiſe mortis anteceſſoris ad communem legum vol. &c. plegij de proſequendo. F. G. &c. Now although ſome ſuch tenants haue an inheritance according to the cuſtome of that manour yet in verie deed they are but tenants at the will of the Lord. For as ſome men thinke if the Lord will expell them, & put them forth they haue no remedy at all, but to ſue vnto their Lord by way of petition, deſiring him to be a good & gracious Lord vnto them. For if they might haue any remedy by the law, then ſhould they not be called (ſay they) tenants at the will of the Lord after the cuſtome of the manour. But other men of no leſſe learning & prudence, haue bene of contrary iudgment, as Lord *Brian* chiefe Iuſtice, in the time of King *Edward* the fourth, whoſe opinion was alwaies that

The forme of the plaine.

Action of treſpaſſe.

that if ſuch a tenant by the cuſtome (paying his ſeruices) be ejected and put forth by his Lord without cauſe reaſonable, he may verie well bring and maintaine an action of treſpas againſt his Lord at the common law as appeareth *termino Hillarij, an* 21. E 4. alſo Lord *Danby* chiefe Iuſtide likewiſe, was of the ſame iudgement, as appeareth *termino Mich. an.* 7. *E.* 4. where he ſaieth that the tenant by the cuſtome is as well inheritable to haue his land after the cuſtome, as hee that hath a free holde at the common lawe, but the determination of this queſtion, I remit to my great Maiſters which can looſe the knots and ambiguities of the law.

Foraſmuch as yet ſtill of this matter. *Cauſidici certant, & adhuc ſub iudice lis eſt.*

And you ſhall vnderſtand that the vſage of ſome manours is, when the tenaunt will ſurrender his lande to the vſe of an other, that he ſhal take a wand or rod in his hand, and deliuer it to the ſtewart of the court, & the ſteward ſhall deliuer the ſame wand in name of ſeaſing, to him that ſhall take the land, and ſuch a tenaunt is called tenant by the verge. Diuers other cuſtomes their be of ſurrendring of copy hold lands, which here for tedioufnes I wil omit. And for aſmuch as

tenants

tenants by cuſtome of the Manour, haue by the courſe of the cõmon law no frehold: ther fore they be called tenants of baſe tenure. Baſe tenure.

Alſo if ſuch a tenant letteth to ferme his copie holde land for longer time then a 12. moneth & a day without the lords licence, it is a forfiture of his land to his Lord.

And know ye that if this tenant fell any timber that groweth vpon the land but one ly for the reparation of the ſame, this is waſte and a forfaiture of his copie hold.

Hitherto haue I treated of the firſt member of our diuiſion, that is to wit, of chattels, for as I ſaid, all leaſes for tearme of years, & that wil be accounted in the lawe, but as chattels, & be compriſed vnder that name, ſaue that theſe be called chattels reals, wher as Kine, oxen, horſes, money, plate, corne & ſuch like be called chattels perſonals. Now wee will proceede to the explication of the ſecond member, that is to ſay, of freeholds. Chattel real and perſonal

Of Freeholdes. Chap. 6.

FReeholde or franke tenementes a man may haue in ſundry wiſe, for either he is ſeaſed for terme of his own life, or for terme of another mans life. If he be ſeiſed for terme of his own life, either he hath gotten ſuch eſtate

ſtate by way of purchaſe, or elſe the Lawe hath intituled him therevnto . I call it by purchaſe, whether hee commeth vnto it by his owne barganing & procurement, or by the guift of his freind, and I call it by the operatiō of intituling of the law, when a man marrieth a woman that is an inheritrix, & hath iſſue by her, and ſhe dieth, now ſhal he haue the landes during his life, by courſe of the lawe, and ſhall be called tenant by the curteſie of England.

Tenant by the curteſy

In likewiſe, if a man be ceaſed in fee ſimple, or fee taile of lands, & taketh a wife, & hee dieth, the lawe giueth vnto the wife the third part of her husbāds lands for terme of life, & ſhe ſhall be called tenant in dower.

Tenant in dower.

Tenant for terme of life. Cap. 7.

TEnant for terme of life, is he that holdeth lands or tenements for tearme of his owne life, or for terme of anothers. Howbeit the moſt frequent and common maner of ſpeaking is to cal him that hath an eſtate for terme of his owne life tenant for life, & him that hath an eſtate for tearme of anothers life, tenant for terme *dauter vie*, that is to ſay, tenant for terme of anothets life.

Ye ſhall note that like as he that maketh the

the leaſe is called the leſour,& he to whome the leaſe is made,is called the leeſſe, ſo hee that maketh a feoffement is called the feoffour and hee to whome the feoffement is made the feoffe.

Alſo if the tenant for tearme of life,or tenant for terme of another mans life do waſt, the leſſour or he in the reuerſion,ſhal maintaine verie well an action of waſte againſte him, and ſhall by the ſame recouer treble damages.

Finally yee ſhall vnderſtande that by an act of Parliament made in the xxvii. yeare of our Soueraigne Lord K. *Henry* the 8. it is enacted that no freehold, nor eſtate of inheritance ſhall paſſe nor take effect by reaſon of any bargaine & ſale, except the ſame be made by writting indented,ſealed,& inrolled in one of the Kings Maieſties Courts at Weſtminſter, or elſe within the coũty wher the land doth lye, before the *cuſtos Rotulorũ*, and two Iuſtices of peace, & the Clarke of the peace of the ſame countie or two of thẽ at leaſt,of which the ſaid clarke ſhal be one, and that ſuch inrolement be made, within ſixe moneths after the date of ſuch writing. And for the inrolement of euery ſuch writting where the land compriſed therein, is

Waſte.

not

not aboue the yearely value of xl. s. they ſhall take ii. s. that is xii. d. to the Iuſtices, and xii. d. to the Clarke. And if the land be aboue the yearely value of xl. s. then they ſhall take v. s. that is ii. s. & vi. d. to the Iuſtice, and ii. s. and vi. d. to the clarke, which ſhall inrole & ingroſſe ſufficiently in parchment ſuch deedes and writtings, & at euery years ende hee ſhall deliuer the ſame to the *cuſtos Rotulorum* of the ſame county, to remaine in his cuſtody among other records of the ſame county, ſo that the parties reſorting thither may ſee them. Prouided, that this extend not to anye tenements or hereditaments lying within any Citie or Towne corporate, wherein the Maiors recorders, or other officers haue authority, or haue lawfully vſed to inrole anye euidences or writtings within their precinct.

Tenaunt by the curteſie, Chap. 8.

TEnant by the curteſie of England, is he that hath maried a wife inherited, & hath had iſſue by her, & ſhee is dead in this caſe the lawe of England permitteth & ſuffereth the husband of ſuch a wife to receiue & keepe ſtill al his wiues land that ſhe had, either in fee ſimple or fee taile, ſo long as he liueth,

liueth. And this is by the curteſie, and vrbanitie of England, for this thinge is vſed in none other country nor region.

But in this it is required that the child be vitall, (that is to ſaye) bee borne and brought foorth into this worlde aliue, and therefore the common ſaying is, & hath ben, that vnleſſe the child be heard crie, the father ſhall not bee tenaunt be the curteſie, for the onely proofe and argument of life in an infant borne, is the vagite & crying. Ye ſhall furthermore vnderſtand, that vnleſſe the huſband be in actuall and reall poſſeſſion of his wiues lands, and ſeaſed of them in her right, he ſhall not be tenant by the curteſie after her death. And therefore if lands diſcend to a mans wife, ſo that ſhee is tenant in the lawe, & to euery mans actions, yet if the husband haue not made an actuall entrie during couerture and matrimony between them he ſhall not be tenant by the curteſie, for it ſhall be reputed and iudged his folly & negligence that he would not enter in her life time.

Otherwiſe it is of aduouſons, rents, cõmons & ſuch other things, which forthwith when they diſcend, be in a man or a woman without any entry or further ceremony of law.

Note that if a tenant by the curteſie of England wil ſuffer or make any waſte in the lands or tenements that he ſo holdeth, he is puniſhable therefore, by action of waſte brought by him in the reuerſion.

Alſo it is to be knowen, that of thinges that be in ſuſpẽce, a man ſhal not be tenant by the curteſie, & therefore if a man be tenant in fee ſimple of certaine land, & doth entermary with a woman that is the ſeignoreſſe or Lady of the ſame, and hath iſſue by her, and ſhe dieth yet ſhall he not be tenant by the curteſie of the Lordſhip or ſeignory, becauſe himſelfe is tenant of the lande, and therefore the Lordſhip is ſuſpended for the time, for a man cannot be both Lord and tenant of one thing, but if he had not bene tenant of land he ſhould haue had the Lordſhip after the death of his wife by the curteſie of England very well.

Alſo note that of a right, only a man ſhall not be tenant by the curteſie, as if a woman ſole ſeaſed in fee of lande or tenements, be diſſeiſed, and after take a husband, and they haue iſſue, and ſhe die before any reentree made, the husband ſhall not bee tenant by the curteſie.

Note further that of a reuerſion, a man ſhall

ſhall not bee tenant by the curteſie, as if a woman ſole ſeaſed of land in fee, make a leaſe to ſome for tearme of life, after taketh a husband, and they haue iſſue, & ſhee die, liuing the leaſe for tearme of life, the husband ſhall not be tenant by the curteſie.

Of tenant in Dower. Chap. 9.

TEnant in Dower, is ſhe that hath ben married to an husband that was during the matrimonie, betweene them ſeaſed of lands or tenements in fee ſimple, or fee tayle which is now dead, & ſhe ſeaſed of the thirde parte of her husbands ſaid landes for tearme of her life. For by the common lawe of the land, if the husband be any time during the couerture ſeaſed lawfully, whether it be by purchaſe or by diſcent, either in fee, or in taile, & dye, his wife ſhall be indowed by the courſe of the cōmon law of the third foote. And in ſome places by an ancient cuſtome, ſhe ſhall be indowed of the moytie, yea & though the husband were neuer ſeaſed actually during the couerture, yet if the lands be caſt vpon him by the lawe, ſo that the law calleth him tenant to euerye mans action, it ſuffiſeth the woman to demaunde her dower, for it were vnreaſonable that the

dower at the comon law.

Dower by cuſtome.

negligence & ſlacknes of entring of the huſband, ſhould hurt the wiues title.

Otherwiſe it is as is ſaid before of tenant by the curteſie, for if landes deſcended to a woman couert and the husband for ſlouthfulnes or negligence, doth not enter in his wiues life he ſhall not be tenant by the curteſie, for by all lawes the wife oweth obedience & ſubiection to her husband, & therefore ſhe cannot compell him to enter, but whē lands deſcend to the wife, the husband onely hath power to enter at his pleaſure.

Tenant by the curteſie.

And ye ſhall vnderſtand that vnleſſe the wife be aboue the age of nine yeares at the time of her husbands death, ſhe ſhal not be endowed by the common law.

But it is to be known that a woman may by diuers waies eſtoppe and preiudice her ſelf of her dower: as if ſhe cōmit any crime, for which ſhe is attainted of treaſon, murther, or felonie, ſhe ſhal haue in this caſe no dower, notwithſtanding ſhe hath obtained her pardon.

A woman ſhal haue no dower.

Alſo, if after the death of her husband ſhe taketh a leaſe for tearme of life, of the ſame landes whereof ſhe is indowable, ſhe loſeth her dower of the ſame. Moreouer if ſhe depart from her husband, and liueth in adulterie

terie with another man, and is not reconciled againe to her husband without coertion of the celestiall power, shee looseth her dower after her husbands death. She shall bee also barred of her dower if she wil withhold from the heire the charters and euidence, concerning the lande whereof shee asketh dower. But none other saue the heire, can with holde her dower for this cause.

It ought not to be vnknown also, of what things she may demande dower, & of what things not. Of lands, messuages, aduousons, rent charge, rent seruices, or segnories in grosse, or otherwise of villanies, of commons certaine of estouers certaine, of milles and offices, or of the profite of them, she is dowable. But of commons & estouers sans number also of annuities, of homages, of thinges of pleasure, as of seruice of payment of roses and semblable she shall not be indowed. No dower.

There be yet two other kinds of dower, the one is called dowment *ex assensu patris*, that is to say, by the assent of the father, and the other is called dowment *de la plus beale part*, that is to say of the faireſt part. Dowment ex sen'u patris.

Dowment *ex assensu patris*, is when the father is seased of lands in fee simple, and his son which is heire apparant, endoweth his

wife at the Church dore, when hee is eſpouſed of parcell of his fathers lands, with the aſſent of his father in writting, teſtyfiing the ſame aſſent, if in this caſe her husband dye, ſhe may forthwith enter into the land ſo aſſigned vnto her, without further procurement of proces of lawe, although the father of her ſaid husband be yet a liue, & in actuall poſſeſsion of the land. But if ſhe thus do, & take her to this endowment at the church dore, ſhe cannot haue her dower alſo by the common law of the third part of all her huſbands lands, or any part or parcell of them, how be it, if ſhe will refuſe this aſsignement made vnto her at the Church dore, and demande dower at the common law, ſhe may ſo doe very well.

Dowment *ad hoſtium eccleſie.*

A man maye alſo endowe his wife at the time of the ſpouſals of his owne landes, the which he hath by his owne poſſeſsion, and that dower is called dower *ad hoſtium eccleſiæ*, that is to ſay, at the Church dore.

Dowment *de la plus beale*

Dowment *de la plus beale.*, that is to ſaye, dowment of the faireſt part ſhall bee in this caſe when a man is ſeaſed of lands which he holdeth of another man by knights ſeruice, & of other lands which be of ſocage tenure, & hath iſſue, which is within the age of 14. yeares

yeares and dye, and the Lord of whome the lands is holden by Knights ſeruice entreth into the land holden of him, & the mother of the child entreth into the ſocage tenure, as gardein in ſocage, if in this caſe the woman wil bring a writ of dower againſt the L. which is gardē in chiualry, he may plead the ſpeciall matter, and ſhew how ſhe is garden in ſocage, and hath ſo much land, and thereupon pray the court that ſhee may be ſuffered to endowe her ſelfe of ſo much lande, being in her own cuſtodie, as amounteth to the third part of the whole lands.

And then the iudgement ſhal be that the gardeine in chiuelrie ſhall retaine the land holden of him quite from the woman, during the nonage of the warde. After which iudgement & ſentence giuen ſhe may goe, & in the preſence of her neighbors, endowe her ſelfe of the beſt parte of that which is in her cuſtodie, amounting to the thirde parte of the whole, & then is ſhee called tenaunt in dower *de la plus beale.*

Finally, ye ſhal vnderſtand that by a ſtatute made the 27, yeare of our moſt dread Soueraigne Lord King *Henry* the eight, it is enacted, that where diuers perſons haue eſtates made to them and to their wiues, & An. 27. H.8.

to the heires of the husband, or to the husband & wife, & the heirs of their two bodies begotten, or the heirs of one of their bodies or for tearme of both or one of their liues, or any other persons & their heires, to the vse of the husband & wife, or to the wife alone for her ioynture: in euery such case the woman shall not be suffered to demaund any dowrie of the residue of her husbands lands of whome she hath ioynter against any tenant of the lande. But in case she hath no such ioynter, thē may she demand her dowrie after the course of the cōmon law. Prouided neuertheles, that if such weomen bee lawfully expulsed from their ioynter, or any part thereof, without fraud or couin, thē shal they be endowed of the residue of their husbands landes, for as much as the landes shall amount vnto, out of which they were so expulsed and put forth.

Prouided also, that if lands or tenements be assured to any woman after mariage for terme of life or otherwise in ioynter (except it be by act of Parliament) & the wife ouerliue her husband, in whose time the ioynter was made, in this case the wife may refuse the lands so appointed vnto her in ioynter, & haue her dower at the common lawe, of such

ſuch lands as her husband was ceaſed of, at any time during the couerure.

Alſo, if the husband committeth treaſon, murther, or fellonye, for which he is attainted, the wife ſhall not haue her dower.

And note that if the husband enter into religion, & is profeſſed, the heir ſhall enter into the land, but the wife getteth no dower till the husband dieth. M. 32. E. 2.

And likewiſe, if a man ſeaſed of land taketh a wife that is an alien borne, & dieth, ſhee ſhall not be indowed, except ſhee bee made deniſin by act of Parliament. *T.* 3 *H.* 6. And note that where the wife bringeth a writ of dower, & recouereth her right, ſhee ſhall recouer no damages, but where her husbād died ſeaſed of the lands recouered.

A diuiſion of inheritance. Chap. 10.

HEtherto haue I ſpoken of freeholdes, now it remaineth to treate of inheritances, not the inheritances that be no freeholdes, for they be freeholds alſo, but the other eſtates of which I haue hetherto treated be onely freeholds and of no higher nature, whereas an eſtate of inheritance, although it be a freehold indeede, yet it is not to bee called by name, ſith it is aftermore excellent Damages.

lent and greater eſtate. But ye ſhall vnder-
ſtand, that of inheritances ſome be of more
amplitude and excellency then other ſome
be, as that inheritance which is pure ſimple,
& without limitation of what heires, which
kind of inheritance is called fee ſimple, But
when I make a limitatiō of what heires, then
it is called fee taile, and of which alſo be two
ſorts, as hereafter more at large ſhall be de-
clared. Now therefore the nature of fee ſim-
ple is ſet foorth with our accuſtomed com-
pendiouſneſſe.

Of fee ſimple. Chap. 11.

Fee ſimple

FEe ſimple is (as I ſaide) the moſt ample & large inheritance that can be in this realme deuiſed or inuented, it is that which a man hath to him & his heires, ſimple without any further limitation, for whether they be of his owne body begotten or not, ſo that they bee the next of his kin, and within the degrees it ſuffiſeth.

So then tenant in fee ſimple is he that hath lands or tenements, whether it bee by purchaſe or by diſcent, to him and to his heires and aſſignes for euer. For if a man will purchaſe landes in fee ſimple, hee muſt needes haue theſe words his heires in his purchaſe,

or theſe be the onley words that make the eſtate of inheritance. Therefore if lands be giuen to a man for euer, and no mention be made of his heires: he hath an eſtate but for tearme of his life, becauſe theſe wordes his heires do lack.

Yet neuertheles, if a man by his teſtament doth deuiſe landes to an other in ſuch place or cauſe where the cuſtome or law wil ſerue ſo to do though hee maketh no mention of heires, but ſaith that he bequeath to ſuch a perſon ſuch lands to haue & to hold to him and to his aſſignes for euermore here an eſtate of inheritance doth paſſe, for in teſtaments the will and intent of the teſtator is to bee pondered and not the formall and preſcript words of the law.

Alſo theſe tearmes in the law, frank mariage and franke almoign, that is to ſay free mariage & free almes doe include in them words of inheritance.

And therefore if I giue landes to a man with my daughter in frank mariage without further addition or mention of heires, this is an eſtate of inheritance, as ſhalbe hereafter declared more plenteouſly. So likewiſe it is of lands giuen to an houſe eccleſiaſticall in pure and franke almes. Moreouer, if lande

be

be giuen to a man and to his blood, or vnto him and to his ſeede, he hath in both cauſes an eſtate of inheritance for in the laſt hee hath a fee taile, & in the other a fee ſimple. For this word ſeed, and blood and ſuch like do employ words of inheritance.

Alſo if lands be giuen to a man and to his heirs males, or females, he hath by this guift a fee ſimple, becauſe it is not expreſſed of what body the iſſue ſhall come.

The halfe blood.

But now it is to bee ſeene who be ſaide a mans heires in the law, yee ſhall therefore know that my brother or ſiſter by the halfe blood, that is to wit by the fathers ſide, and not by the mothers, or contrariwiſe by the mothers ſide, & not by the fathers, ſhall neuer bee mine heire nor none that come of them. Neither mine baſtard can bee mine heire, nor mine own naturall father nor mother, nor grandfather, nor grandmother can bee mine heire. For it is a principle and ground of the law, that inheritance may linially diſcend, but aſcend it may not. And therefore if I haue landes in fee ſimple and die without iſſue of my body, my father can not bee mine heire but my fathers brother or ſiſter ſhall, and then if my vncle or aunt die ſeaſed without iſſue my father ſhal haue

A baſtard ſhall be no heire.

A ground of the law.

the

the lands as heire to mine vncle and not as heire to me, for that can not bee.

But it may goe from me to mine vncle or aunt well enough, for that is not called a lineall aſcention, but a collaterall diſcent.

Alſo ye ſhall vnderſtand that a lineall diſcent is when the diſcent is conueyed in the ſame line of the whole blood, as grandfather, father, and ſonne, and ſo downe. And collaterall diſcent is of an other braunch, from aboue of the whole blood, as the grand fathers brother or fathers brother and ſo diſcending. Lineall and collaterall diſcent.

And ye ſhall note, that by the common law of this realme, the eldeſt ſon ſhall haue the whole inheritance, and after him if hee haue no iſſue the ſecond ſonne, and ſo forth. Alſo if I haue no ſonnes but daughters, then ſhall all the daughters together inherite, which be called coparceners, but if he haue no iſſue at al, neither ſonnes nor daughters, then ſhall my eldeſt brother in heritage ſucceed me, but if I haue no brother, then my ſiſters if I haue any, if not, my vncle by my fathers ſide, if the lands be of mine own purchaſe, or if they diſcended vnto me from my father. And to be ſhort, if there be none in life of my fathers ſide, the purchaſed lande ſhall Coparceners.

ſhall goe to my mothers ſide, & if there can be found no heire neither by my fathers ſid, nor yet by my mothers, then ſhall it eſcheit, as they call it, to the Lord of whome it was holden, for euerie land muſt needes be holden of ſome Lord, as ſhalbe hereafter ſhewed. But if lands diſcend vnto me by my mothers ſide, then if I faile of iſſue, the landes ſhall diſcend onely to my heires of my mothers ſide, and neuer to mine heires of my fathers ſide, as on the contrarie ſide if I haue lands or any hereditaments by diſcent from my father or his blood, they ſhall neuer diſcend to my heires by my mothers ſide.

Eſcheite

And thus ye ſee a great difference in this behalfe, betweene purchaſed lands, & lands which diſcend from an aunceſtor.

Diuerſitie

If there be three ſons, and the middle ſon purchaſe lands and die without iſſue, the eldeſt ſhall haue the lands, & not the yongeſt.

Alſo it is a principle in our law, that none can be mine heire of lands that I hold in fee ſimple, vnles he be mine heire by the whole blood, that is to ſay, both by father and mother, for if a man haue iſſue two or three ſons by ſundry wiues, and the eldeſt purchaſeth lands in fee and dieth without iſſue, his halfe bretheren, I meane thoſe that be not his

A ground of the law.

his bréethren both by the fathers ſide, and mothers ſide, ſhall not haue the land, but it ſhall go to his vncle. Likewiſe if a man hath by his firſt wife a ſon and a daughter, and by his ſeconde wife another ſonne, and the ſon by the firſt wife purchaſeth lands in fee ſimple, & dieth without iſſue the ſiſter ger-main that is to ſay, both by fathers ſide & mothers ſhall haue the landes by diſcent as heire to her brother, and not the yonger brother, for as much as the yonger brother cannot in this cauſe be heire to his elder brother, becauſe hee is no brother germain vnto him. Otherwiſe it is of landes or other hereditaments entailed as ſhalbe hereafter ſpecified.

Alſo if a man be ſeiſed of lands in fee ſimple and hath iſſue a ſonne and a daughter by one wife, and after the death of his firſt wife a ſonne by another wife, and dieth, and the eldeſt ſonne entreth into the lands, and after hee dieth with out lawfull iſſue of his body, the daughter ſhall haue the lands and not the youngeſt ſonne, and yet the yongeſt ſonne is heire to his father, but he is not ſo vnto his brother. But if in this caſe the eldeſt ſonne had not entred after the death of his father, but had died before any entry made by him, then ſhall not the ſiſter germain

main enter, but the yonger brother his heir to his father, becauſe the eldeſt brother was neuer in actual poſſeſſiō which is requiſit to ỹ perſō that claimeth to be heire collateraly.

But to the lineall heires, it ſuffiſeth that the aunceſtour ſhould haue bene heire if he had liued, I meane as thus. A man ſeaſed of lands & hath iſſue, a ſonne and a daughter by one wife, and afterward a ſonne by another, he dieth, and after his death the eldeſt ſonne entereth not but dieth without iſſue before he can make actuall entre, heere in this caſe his ſiſter ſhall not haue the lands as heire to her brother, becauſe her brother was not in actuall poſſeſſion, but the yonger brother ſhall haue them as heire to his father, yet if the eldeſt ſonne in that caſe had left behinde him iſſue of his body, whether it had bene ſonne or daughter, this iſſue notwithſtanding, that the father of the iſſue was neuer poſſeſſed either actually or in the law ſhall haue the lands & ſhall conuey his diſcent from his father, the cauſe heereof is this that the ſonne or daughter is lineall heire, whereas the brother, ſiſter, vncle, aunt, &c be heires collaterall, and ſo ye ſhall obſerue a diuerſitie.

Diuerſitie.

I call an actuall poſſeſſion, when a man entereth

treth indeed into lands, which be to him discended, but a possession in law is called whē lands be discended to a person, and he hath not yet really & actually entred into them. For notwithstanding that he is not in actuall possession yet he is possessed in the lawe, that is to say in the eie and consideration of the law he is deemed to be possessed, forasmuch as he is tenant for euery mans action that will sue for the said lands or els assuredly there should ensue an intolerable inconuenience, as we shall more copiously open in another place. Ye shall furthermore vnderstand that this worde inheritance is not only to be accommodat & applyed to that which cōmeth by discent or succession from a mans ancestors or prodecessours, but also to euery purchase in fee simple or fee taile. Hereditas quid sit.

And note that a man can haue no larger or greater estate then fee simple.

Of fee taile. Chap. 12.

YE shall vnderstand that before a certain statute called the statute of Westminster second there was no estate taile but all was fee simple, either purely, that is to say without condition, or at the least way conditionally as appeareth by the pretence of the said estatute, but now sithence the promulgating of the estatute, diuers formes of Westminst. 2. Chap. 1. Decision.

eſtates taile haue riſen.

Fee taile is when it is preſcribed and limited in the guift, what ſort of heires and by whome engendred ſhall inherite.

As for example, I gaue lands to a man and to his heirs & go no further, this is a fee ſimple: but if I make a limitation, and adde of his body begotten, now it is a fee taile, that is to ſay, a fee or inheritance limitated, preſcribed, determinate or aſſigned.

So that if I giue lands to a man and to his heires, he hath fee ſimple, but if I giue lands to him and to his heires of his body lawfully begotten, hee hath but a fee taile, forasmuch as I appoint, limit, preſcribe, and expreſſe what heirs they ſhall be, and for lack of ſuch heires the guift ſhall be expired and worne out, and the landes ſhall be reuerted againe to the giuer or his heires.

But ye muſt obſerue and note that there be two kindes of fee taile. There is a generall taile and there is a ſpeciall taile.

Fee taile generall is where lands be giuen to a man & to his heirs of his body begotten without any mentioning & expreſſing by what woman they are begotten.

General taill

And therefore if a man be tenant in the generall taile of lands, and taketh a wife & hath iſſue by her, and ſhe dieth, and afterward

ward he taketh another wife, of whome he hath alſo other iſſue by her, either of theſe iſſues is in heritable to his land intailed. But if I expres in the gift by what womā the heirs ſhal be procrated and ingendered, then it is an eſpeciall taile, as for example to make the thing plaine, if landes be giuen to a man and to his heirs of his body lawfully begotten by Margret his wife, this is an eſpeciall taile, for the iſſue of him begotten by an other woman, ſhall neuer inherite by force and vertue of the taile. Likewiſe it is if lands be giuen to a woman & to the heires of her body lawfully begotten (and ſhewe not by what man) this is a generall taile, but if I goe forward and ſay by ſuch a man her huſband, then it is an eſpeciall taile. Special taile

Alſo if I giue lands to a man & to his wife, & to the heires of their two bodies lawfully begotten: this is an eſpeciall taile, as well in the husband as in the wife.

Semblable it is, if a man giueth lands to an other man with his daughter, or kinſwoman in frank mariage, this word (frank mariage) imployeth an eſtate taile eſpeciall, & in this caſe as well the man as the woman hath an eſtate in the ſpeciall taile. Franke mariage.

But if I giue landes to a man and to ſuch a woman, and to his heires that he hath be-

got of her, heere the woman hath an eſtate but for tearme of her life, and the husbande an eſtate in the ſpeciall taile. And likewiſe it is in the womans behalfe, as if I giue lands to a man and to his wife, and to her heires of her body by her ſaid husband engendered; he hath an eſtate but for tearme of life, and ſhe an eſtate in the ſpeciall taile. But in both cauſes, if I had ſaid to the heires, and not to his or her heires, then ſhould either of them haue had an eſtate in the ſpeciall taile, becauſe this worde heires is aſwell referred to the one as to the other.

Deſcent by heires males

Ye ſhall alſo vnderſtand, that if landes be giuen to a man, and to the heires males of his body, this is an eſtate taile, and in this caſe, the heire female ſhall neuer inherite.

Alſo, if a man hath iſſue and dieth, and landes be giuen to him and to his heires of his body begotten, this is a good eſtate taile although the father were dead at the time of the guift. Finally it is to bee noted, that of landes which a man hath in fee ſimple the poſſeſſion of the brother, ſhall cauſe the ſiſter germaine, that is to ſay, the ſiſter both of the fathers ſide and mothers to inherite, & in this caſe the brother by the halfe blood ſhall not inherite, as heeretofore was ſaide, but of landes which be entailed otherwiſe it

is. Therefore if a man be seased of landes in the generall taile, and hath issue by his first wife a sonne & a daughter, and also a sonne afterwarde by an other wife, and dieth, and the eldest sonne entreth into the lands, and after dieth, the sister germaine to the eldest sonne shall not haue the lands, but the yonger brother of the halfe blood, because who soeuer shall inherite lande or any other hereditaments in taile must claime them as next and imediate heire not to him that dieth last seased of the landes, but to him to whom the lands were first giuen, vnto whom in the case before remembred, is the sonne and heire and not the daughter.

Thus ye shall marke a great diuersitie betweene the forme of succession in the lands of fee simple, and the forme in fee taile. Diuersities.

Tenant after possibilitie of issue extinct Chap. 13.

VVHen landes tenements or other hereditamẽts, be giuen to a man & to his wife, & to the heirs of their two bodies lawfully begottẽ, if in this case either of them chance to die before they haue issue betweene them, he or she that liueth, is still tenant in taile, but without possibilitie of anye issue that can be heire to these lands or hereditamẽts thus intailed, & for this cause he or she thus ouerliuing, is called tenaunt

in taile after posibilitie of issue extinct, for in such a tenant is al posibilitie of issue that may be inheritable to these landes by force of the guift in taile vtterly extinct or quenched, & by his or her death the estate taile shall expire, cease, & be abolished for euer, and shall reuert and turne againe to the giuer or donour from whence it came.

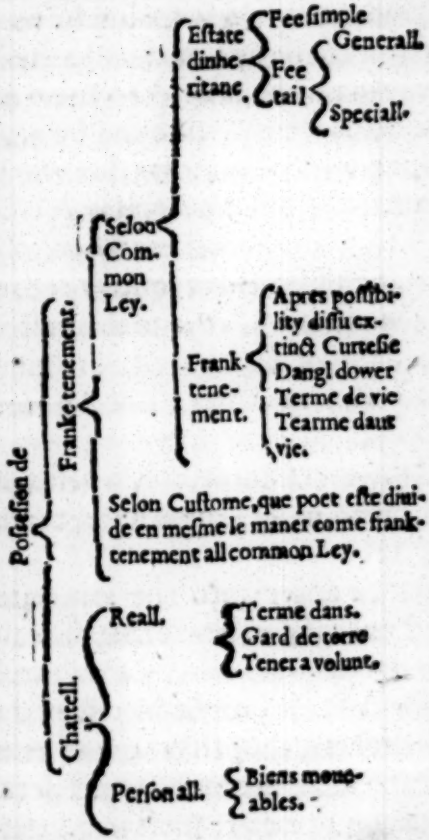
Vnpunishable of waste

Yet for as much as the tenant after posibilitie of issue, had once an inheritance in him, he shall not be punished by an action of waste though hee maketh neuer so much waste in the lands and tenements, whereas yet in effect he is but a tenant for tearme of life. But if this tenant doth alien, in fee, such lands, he in the reuersion maye enter for the forfaiture,

Forfaiture.

And this for estates at this present time shall suffice. But to the intent that ye maye the more eafilie comprehend all the members of the diuision of possessions & estates which men may haue in lands, tenements, and other hereditaments, it shal not be euill done to set forth as it were in a table before your eyes the diuision thereof which is this.

A figure of the diuiſion of poſſeſsions.



Of Parceners or other Coheires. Chap. 14.

HEtherunto I haue made a compendious & ſhorte declaration of eſtates of all ſorts. But where I ſaid, that among ſiſters there is no prerogatiue or preheminence

concerning the inheriting of their anceſtors lands, but that they ſhall be altogether inheritours, and make as it were but one heir, it is expedient to make a further declaratiō and proceſſe in this behalfe, & to ſhew how & in what maner this partiſiō ſhalbe made.

Diuiſion of parceners at the common law, & parceners by cuſtome.

But ye ſhall vnderſtand, that there be beſides parceners at the common lawe, which be onely ſiſters, alſo parceners by cuſtome, which is amongſt brothers contrarye to the courſe of the common law, and this cuſtome is in ſome places of Kent, & in other places where lands & tenements be of the tenure of Gauelkind.

Ye ſhal therefore know, that when a man is ceaſed of land in fee ſimple or fee taile, & hath no iſſue but daughters, and die, & the daughters doe enter into the landes thus deſcended vnto them, nowe they be called parceners or coheires, and by a writ called *De partitione facienda*, broght by one of them againſt the others, they ſhal be conſtrained by the law to ſuffer an equall partitiō to be made of the lands betweene them.

Writ de partitione faciendo.

Nowe partiſion maye be made in ſundry waies. One way is when they themſelues do make partiſion betwene them of the whole heritage, and doe agree vnto the ſame, and doe enter euery one into her parte ſo allotted

ted vnto her.

Another way is when by all their agreements & consent one common freind doth make the partition. In which case the eldest sister shall haue the first election, and after her the second sister, & so forth. But if they agree that the eldest sister shall make the partition, and she maketh it, then the eldest shall not choose firste, but shall suffer all her sisters to choose before her, as it is thought. Partition in diuers manner

There is also another forme of partition, which is equally to deuide the lands into so many partes as their bee coheires or parceners, and to write euery part so deuided in a seuerall scroule of paper, & so put the saide scroules in a bonet, or to inclose them seuerally in balles of waxe, & then the eldest sister to chose which ball she wil, or to put her hand into the bonnet, and to take a scroule & to hold her to her chance & alotmente, & so consequentlie euery sister after other.

And ye shall note, that partition by agreement may as well be made by nude & bare words without writting as by writting. Note.

And if any of the perceners will not suffer any partition to be made, then maye the other that would haue partition, purchase a writ called *De partitione facienda*, against thē that refuse partition to compel the same to suf- A writ, de partitione facienda.

ſuffer partition to be made accordingly, & then by the iudgement of the court, the Sheriffe by the ſerement and oath of twelue men ſhall make partition betwene them, & ſhall aſsigne to each ſiſter her portion as he ſhall thinke good, without giuing anye election of choiſe to the eldeſt.

And if two manours or meeſes happen to diſcend to two ſiſters & the manors be not of equal value, then may ſhe, to whome the leſſe manour or meeſe is alotted, haue aſsigned vnto her a rent proportionably out of the other manour for the which rent ſhe & her heirs may diſtraine of common right, though they haue no writting thereof.

Diſtreſſe of common right.

Finally, ye ſhal vnderſtand, that if a man be ſeaſed of lands in fee ſimple, & hath iſſue two daughters, and giueth with one of his daughters to another man that ſhall marry her, the thirde or fourth parte of his land in franke mariage and dieth, if in this caſe the daughter that is in this wiſe beſtowed & aduanced, will haue her portion of her fathers heritage, ſhe muſt put her land giuen vnto her in franke mariage Hochpot in againe. I meane ſhe muſt be contented to ſuffer her ſaid lands to be cõmixt & mingled with the other lands of which her father died ſeaſed in fee ſimple, ſo that an equall diuiſion may

Hochpot.

be

be made of the whole, or elſe ſhe ſhall haue no part of thoſe lands of which her father died ſeaſed. But if her father had made vnto her a comman guift in taile or feoffemente in fee, ſhe ſhould not need to put her lands in Hochpot, but may very well keepe & retaine them ſtill, and alſo haue as good parte of the reſt of the landes of which her father died ſeaſed, as her other ſiſter or ſiſters haue. For a guift in franke mariage, is accounted, the moſt free & moſt liberall guift that can be, and that guift which the lawe iudgeth to be onely for the aduancement & beſtowing of the daughter, whereas feoffements in fee ſimple, and alſo common guiftes in taile be accuſtomably for other cauſes, & for the aduantage rather of the giuer, or feoffor then of the taker. Franke mariages.

Alſo if perſeners make partition of lands being within age that partition is void.

And if perſeners in fee ſimple make partition and the part of the one is better then the other being of full age of xxi. years, thē the partition is good and can not be defeated, but if it be of lands in fee tayle, the one part being better then the other, that partition may be defeated by their heires.

Of

HEtherunto verily haue we ſpoken of Coheires called parceners of the common law, which as is heeretofore declared, doe come to lands and other hereditamēts ioyntly by the courſe, operation and act of the lawe. Now ſhall we ſpeake ſomewhat of them which either iointly or ſeuerally come to lands, tenemēts, or other hereditaments by their own purchaſe, act, procurement & working. And of theſe they that come to thē by ioint title, way or colour, be called iointenants, but they that come by ſeuerall titles, waies, or colours, to lands or tenements be named tenants in common.

Tenants in common.

So then, if a man being ſeaſed of lands or tenements or other hereditaments, ſhall thereof infeoffe two, three, foure, or more, to haue and to holde to them in fee ſimple, fee taile, or for tearme of their liues, or for tearme of anothers life, theſe perſons ſo enfeoffed and ſeaſed, be called Ioyntenantes. Alſo if two or moe doe expell and diſeaſe another man of any lands or tenementes to their owne behooue & vſe, theſe diſeaſours and wrong doers are nowe become ioyntenants, becauſe by their owne act they come ioyntly to this lande. But if they doe diſeaſe another man to the vſe onely of one of thē, in this caſe they be not ioyntenants, but hee

to

to whose vse the diseasing is made is tenant alone of the same, and the others haue nothing in the tenancy, but be called aydours or coadiutors to the diseasing.

And ye shal vnderstand, that a diseasing is properly, where a man entreth into anye landes or tenements their where his entrie is not lawfull, and putteth out him which hath the freehold of the same. Disiesin.

And ye shall furthermore know, that the nature of iointenancie is, that he which suruiueth and ouerliueth the other, shall haue to him selfe alone the whole and entire tenancie according to that estate which hee shoulde haue had if the ioynture had bene continued, as (for example) three ioyntenants be of lands in fee simple, and the one hath issue and die, in this case the two which doe ouerliue their fellow, shall haue the whole landes betweene them, and the issue of him that is departed getteth no thinge. And if the second ioyntenant hath also issue & die, the third which hath ouerliued them both, shall now haue and enioy the whole to him and to his heires for euermore. Surmiour taketh place.

But otherwise it is of coheires which in our law be called parceners. For if there be three such coheires and perceners, and before any partition made, the one haue issue Diuersitie.

a ſonne or a daughter & dieth, her portion ſhall diſcend and fall to his childe, and ſhall not runne amongſt the other ioynt heires or coparceners. Howbeit if ſuch parcener or coheire had died without iſſue, then ſhould his portion haue diſcended to his coheires. But how not by force of ſuruiuour or ouerliuing which in latine is called *Ius acriſcendi*, but by verie diſcent, for where any of the coheires die without iſſue, who can be heire to him or her ſo dying, but the other coheires to him or her ſo dying, or the reſt of the coheires if there be many.

And like as this right of ſuruiuour or ouerliuing, holdeth place amongſt iointenaunts of lands and tenements, ſo in like maner it holdeth place amongſt them which haue ioint eſtate or poſſeſſion with others of chattels whether they be reall or perſonall. As (for example) if a leaſe of lands or tenemēts be made to many for terme of certain yeares the ouerliuer or ouerliuers, ſhall haue the whole during the terme by force of the ſame leaſe. So if chattels perſonall, if an horſe, oxe graine, or other ſuch perſonal chattel be giuen to many, he which ouerliueth ſhal haue the ſame alone. In ſemblable wiſe it is of debts and dueties. For if an obligation bee made to many for one debt, and of ſome other

Ioyntenants of reall and perſonall goods.

ther couenants and contractes, the lawe is likewise so.

Also some ioyntenants may be which may haue ioint estate and bee iointenantes for tearme of their liues, and yet haue seuerall inheritances. As where landes be giuen to two men and to the heires of their two bodies engendred, in this cause, these two persons haue ioint estate for terme of their two liues. And yet they haue seuerall inheritances. For if the one haue issue and die, the other that suruiueth shall haue all by force of the suruiuour for tearme of his life. And if he that suruiueth hath also issue and die, thē the issue of the one shall haue the half of the lands, & the issue of the other shall haue the other halfe and they shall hold the land betweene them, in common, and shall not bee ioyntenants, but tenants in common & the cause & reason why such donees in such cases haue a ioynt estate for tearme of their liues, is for that at the begining the landes were giuen to them two which words without more saying, make a ioint estate to them for tearme of their liues, for if a man will let land to another by deed or without deede, not makeing mention what estate hē hath, and of this maketh liuerie of seasing, in this case the lease shal haue an estate for tearme of

Ioyntenants of seuerall inheritances

Tenants in common

of his life. And if he haue no liuery of ſeiſin, he is but tenant at will. And ſo foraſmuch as the lands were giuen vnto them, they haue a ioynt eſtate for tearme of their liues. But the cauſe why they haue ſeueral inheritance is this for that they cannot by poſſibilitie haue an heire betweene them engendred as a man and a woman may haue, wherefore the law will that their eſtate and their inheritance ſhall be ſuch as reaſon wil, after the forme and effect of the words of the guift, & that is to the heires that the one engendred of his body by and of his wiues, and to the heires that the other engendreth of his body by any of his wiues. So it behoueth by neceſſitie of reaſon, that they haue ſeuerall inheritances. And in ſuch caſe if the iſſue of one of them after the death of them both do die, ſo that he hath no iſſue aliue of his body engendred then the donour which gaue the land, or his heires may enter in the halfe as in his reuerſion though the other hath iſſue aliue. And the cauſe is that foraſmuch as the inheritances be ſeuerall, therefore the reuerſion in the law is ſeuered, & the ſuruiuor of the iſſue of the other ſhall holde no place to haue the whole. And as it is ſaid of males in the ſame maner it is where landes be giuen to two females & to the heires of their

two

two bodies begotten.

Also if lands be giuen vnto two and to the heires of one of them, this is a good ioyntenancy, and the one hath a freehold, and the other hath a fee simple, and if he which hath fee simple die, he that hath the freehold shal haue the whole by the suruiuour for tearme of his life.

Suruiuour holdeth no place.

And if these two ioyntenants ioyne in a guift in the taile to a stranger, reseruing a rent to him that hath an estate but for his life, this reseruatiō is void to make a tenure. Likewise it is where tenements be giuen to two, & the heires of the body of one of them engendred the one hath a freehold and the other fee taile.

Note, if two ioyntenants be seased of an estate of fee simple, and the one granteth a rent charge hy his deede to another, out of that which to him belongeth, in this case during the life of the granter, the rent charge is good and effectuall, but afrer his decease the rente charge is voide, as to charge the lands, for he that hath the lande by the suruiuour, shall hold all the lande discharged, the cause is for that he that suruiueth claymeth to haue the land by the suruiuour and not by discent of his fellow. But otherwise it is of parceners or coheires, for if there bee

Rent charge granted by a ioyntenant.

Diuersitie.

two parceners in fee ſimple and before any partition be made, the one chargeth that, that to him belongeth by his deed of a rent charge and dieth without iſſue, heere that which to him belongeth diſcendeth to the other parcener, & in this caſe the other parcener ſhall hold the lande charged becauſe he commeth to the halfe by diſcent as heire.

Deuiſe by teſtament.

Alſo if there be two ioyntenants in fee ſimple, within one borough where the lands & tenements within the ſame borough be diuiſible by teſtament, if the one of the ſaide iointenants deuiſe that which to him belongeth, by teſtament and die, this deuiſe and legation is voide. And the cauſe is for that, that no deuiſe may take effect till after the death of the teſtator which bequeathed and deuiſed the ſame, and by his death all the land incontinent commeth by the law to his fellow that ſuruiueth by the ſuruiuor which neither claimeth nor hath any thing in the land by the deuiſe, but in his owne right by the ſuruiuour after the courſe of the law, & for this cauſe ſuch a deuiſe is void.

A ground of the law.

But otherwiſe it is of parceners ſeaſed of tenements diuiſable in ſuch caſe of deuiſe for the cauſe aboue remembred. And it is commonly ſaid, that euery iointenant is ſeaſed of the lande that he holdeth ioyntly per

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my & per tout, that is, throughout & by all. And this is asmuch to say, that hee is seased by euery parcell and by all which saying is true, for in euery parcell & part, & throughout all the lands and tenements he is ioyntly seised with his fellow. And therefore if the one ioyntenant make a feoffement to his companion, that is voide because hee can make no liuery of season to him. Also if two ioyntenants be seased of certaine landes in fee simple, and the one letteth that, that to him belongeth to a stranger for terme of xl. yeares and dieth within the tearme, in this case after his death the lesse may enter and occupy the halfe to him letten during the said tearme though the lesse neuer had possession of it in the life of the leesour by force of the lease. And the difference between the cause of the graunt of a rent charge & this cause is this that in the grant of rent charge by a ioyntenant the lands or tenements, abide alway as they were afore without that, that any haue right to haue parcell of the tenements but themselues and the tenements abyde in such plite as they were before the charge. But where a lease is made by a iointenant to another for tearme of yeares, incontinent by force of the lease, the lesse hath right in the same lande, that is to say, of all

Diuersitie.

Diuersitie between a grant of a rent & lease.

that, that to the leſſour belongeth by force of the ſame leaſe during his tearme. And if the leſſour in this caſe die, the other ioynte-nant ſhall haue the rent or tearme during the ſaide tearme, becauſe the reuerſion is come to him by ſurviuour. Finally if a ioynt eſtate be made of land to the husband and wife, and to the third perſon, in this caſe the husband and the wife haue not in the law in their right but the halfe, & the third perſon ſhall haue as much as the husband and the wife haue, that is to ſay the other halfe.

And the cauſe is, for that the husband and wife bee but as one perſon in the eye of the law, and it is heere in like caſe as if an eſtate be made to two ioyntenants where the one hath by force of the ioynture the one halfe, and the other the other halfe. In ſemblable wiſe it is where an eſtate is made to the huſ-band and wife, and to other two men, in this caſe the husband and the wife haue not but the thirde part, and the other two men the other two parts.

Alſo if two or three together diſſeaſeth a nother of lands and tenements to their own vſes then ſuch diſſeiſours be called ioynte-nants. More ſhall be ſaid of this matter tou-ching ioyntenants in the next Chapter.

TEnants in common (as I saide before) be they that haue lands or tenements in fee simple, fee taile, or for tearme of life which haue such landes & tenements by seuerall titles, and not by one ioynt title and none of them knoweth that which is seuerall to him. And in this case they ought by the lawe before partition made betweene them to occupy such landes and tenements in common, and vndeuided, and to take the profits in common. And because they come to such landes and tenements by seuerall titles, and not by one selfe ioynt title, & their occupation and possession in the same is among them in common, they be called tenants in common, or tenants *pro indiuiso*. As for example, if a man enfeoffe two ioyntenants in fee simple, and the one of them alieneth that, that to him belongeth to another in fee, now the other ioyntenant & he to whome the alienation was made, bee tenants in common, for that they be seased of such tenements by seuerall titles, for the one commeth to the one halfe by the feoffement of the ioyntenant and the other hath the other half by force of the first feoffement made to him and to his first fellowe, and so they be in by seuerall titles and by seuerall

feoffements.

Diffinition of fee onely,

And it is to wit, that when it is ſaid in any booke, that a man is ſeiſed in fee without more ſaying or addition, it ſhall be vnderſtoode fee ſimple, for it ſhall not be vnderſtood by ſuch a word in fee, that a man is ſeiſed in fee taile, except there be put in it ſuch addition in taile.

Iointenants.

Alſo if three ioyntenants be and the one of them alieneth that which vnto him belongeth to another in fee, in this caſe the alienee is tenant in common with the other two ioyntenants. But yet the other 2. ioyntenants be ſeaſed of the two partes ioyntly, & of theſe two parts the ſuruiuor betweene them holdeth place.

Alſo if there be two ioyntenants in fee, & the one giueth that, that vnto him belongeth to another in the taile, the donee and the other ioyntenant bee tenaunts in common. But if the lands be giuen to two men, and to the heires of their two bodies engendred the donees haue a ioint eſtate for tearme of their liues, and if each of them haue iſſue & die, their iſſues ſhall hold in common.

Alſo if lands be giuen to two men to haue and to holde, the one halfe to the one & his heires, and the other halfe to the other and to his heires, they be tenants in common.

Alſo

Alſo if a man ſeaſed of certaine lands enfeoffeth another in the half of the ſame land without any ſpeach of aſſignement or limitation of the ſame halfe in ſeueralty, at the time of the feoffement, then the feoffee and the feoffour ſhall holde their partes of the land in common.

And as it is of tenants in common of lands or tenements in fee ſimple, fee taile, euen ſo it is of tenants for tearme of life, Therefore if two ioyntenants be in fee, & the one letteth to a man that, that vnto him belongeth for tearme of life, and the other ioyntenant letteth that which to him belongeth, to another for tearme of life alſo, theſe two leſſes be tenaunts in common for tearme of their liues. Alſo if a man let lands to two men for tearme of their liues, of whom the one granteth all his eſtate to another, then that other tenant for tearme of life, and he to whome the grant is made, ſhalbe tenants in cõmon during the time that both the leſſes be aliue. Ioyntenants

Note, if their be two ioyntenants in fee, and that one letteth that, that vnto him belongeth, to another for tearme of life: the tenant for tearme of life during his life, & the other tenant that did not let, be tenaunts in cõmon. And vpon this caſe a queſtion may riſe as thus. Let the caſe bee that the leſſor Queſtion.

hath issue & dieth, liuing the other ioynte-nant his fellow, & liuing the tenāt for terme of life, the question is whether the reuersion of the halfe that the lessor hath, shall discend to the issue of the lessour, or whether the o-ther ioyntenante shall haue it by the suruiuour or no. And some haue saide that the o-ther ioyntenant shall haue the reuersion by the suruiuour, for as much as when the iointenantes were ioyntly seased in fee simple, though one of them made an estate of that, that vnto him belongeth for tearme of life, and though hee hath seuered the frankte-nemēt of that, that to him belongeth by the lease, yet he hath not seuered the fee simple.

But the fee simple abideth to them iointly as it was before. And so it semeth vnto thē, that the other ioyntenaunt which suruiueth shall haue the reuersion by the suruiuour. But other haue thought the contrary, and this is their reason. When one of the iointe-nants letteth that which vnto him belong-eth to an other for tearme of life, by such lease the franke tenemente is seuered from the ioynture. So that the reuersion that is dependant vnto the same franketenement, is seuered from the ioynture. Furthermore, if the lessor had reserued to him a yearlye rent vpon the lease, the lessour onely should haue

haue the rent, which is a proofe that the reuertion is onely in him, and that the other hath nothing therein.

Also if the tenant for tearme of life were impleded and make default after defaulte, the lessour shall be onely heereupon receiued to defend his right and not his fellowe, which prooueth the reuersion of the half to bee onely in the lessour, and so consequently, if the lessour die, lyuing the lesser for tearme of life, the reuersion shall discend to the heires of the lessor, & shall not come to the other ioyntenant by the suruiuour after these mens opinions, yet it is doubtfull. But in this case, if the ioyntenant that hath the frank tenement, haue issue & die, siuing the lessour and the lessee, then it seemeth that the issue shall haue the halfe in his demesne as of fee by discent, for as much as the frank tenement maye not by nature of the ioynture be annexed to a reuersion, & it is certaine that he that made the lease was seased of the halfe in his demesne as of fee, & that none shal haue any iointure in his frāktenement. So that this shall discend to his issue.

Relcit.

Quære

If three iointenants be, & the one releaseth by his deede to one of his fellowes all the right he hath in the land, then hath hee to whome the release is made the third part of

Release

of the lands by force of the releaſe, & hee & his fellow ſhall holde the other two partes iointly. And as to the third part that he hath by force of the releaſe, hee holdeth it with himſelfe and his fellow in common.

And it is to wit, that ſometime a deed of releaſe ſhall take effect to put the ſtate of him that made the releaſe in him to whome the releaſe was made as in ỹ caſe aforeſaid.

And if a ioynt eſtate be made to the huſband and wife and to a third perſon & the third perſon releaſeth his right that he hath to the husband: then hath the husband the halfe which the third perſon had, and the wife of this hath nothing. Semblably if the third perſon had releaſed to the wife not naming the husband in the releaſe, then ſhuld the wife haue the half that the third perſon had, and the husband nothing of this but in the right of his wife, becauſe ſuch releaſe ſhal enure to put the eſtate in him to whom it was made of all that, that belongeth to him that made the releaſe. Againe in ſome caſe a releaſe ſhall enure & ſerue to put all the right that a man hath that made that releaſe in him to whome it is made. As a man being ſeaſed of tertaine landes is diſſeiſed by two diſſeiſſours if the perſon diſſeiſſed by his deede releaſe all his right to one of the

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disseisours, then he to whome the release is made, shall haue & hold all to him alone & put out his fellowe out of the occupation of it. And the cause is for that the two disseisors were seised by wrong by them done against the lawe, and when one of them getteth the release of him that had right to enter, this right resteth in him to whome the release is made, and in such plite as if he that had the righte had entred and infeoffed him of the same. And the cause is, for that he that before had an estate by wrong hath nowe by the release a rightfull estate. Disseisours.

And in some case a release shall enure and take effect by way of extinguishment, and such a release shall help the ioyntenant to whome the release was not made, as well as him to whome it is made, as if a man bee disseised, and the disseisour maketh a feoffement to two men in fee, if the person disseised release to one of the feoffees in fee by his deed, thē such release shal enuer to both the feoffes because the feffees haue their estate by the lawe, that is to say, by the feoffment & not by wrong done to any other. Release by way of extinguishment.

And in like maner if the disseisour make a lease to a man for tearme of life, the remainder ouer to another in fee, if the disseised will release to the tenant for terme of life A release shall enure to him in the remainder.

life all his right, this releaſe ſerueth as well to him in the remainder, as the tenaunt for tearme of life. And the cauſe is for that the tenant for tearme of life commeth to his eſtate by the courſe of the lawe, and for this cauſe the releaſe ſhall enure and take effect by way of extinguiſhment, of the righte of him that hath releaſed. And by this releaſe the tenant for tearme of life hath no greater eſtate then hee had before the releaſe made vnto him, & yet the right of him that releaſed is all vtterlye extincte and gone. Wherefore for as much as ſuch a releaſe cannot enlarge the eſtate of the tenant for tearme of life, it is reaſon, that it ſhall ſerue him in the remainder.

Alſo if their be two perceners, & the one alieneth his part to another: the other parcener & the alienee be tenants in common.

Tenants in common by title of preſcription.

Furthermore, tenants in common maye be by title of preſcription if that one & his anceſtors or they whoſe eſtate he hath in the halfe haue holden in common the ſame half with the other tenaunt that hath the other halfe, & with his aunceſtors or them whoſe eſtate he hath as vndeuided time out of minde. And yee ſhall marke that in ſome caſe tenants in common, ought to haue of their poſſeſſion ſeueral actions, and in ſome caſe

Actions ſeuerall.

caſe they ſhall ioyne in one action, for if their bee two tenants in common and they be diſſeiſed, they ought to haue againſte the diſſeiſor two aſsiſes and not one aſsiſe. For euery of them ought to haue an aſsiſe of his halfe, becauſe they were ſeiſed by ſeuerall titles, but otherwiſe it is of ioyntenants, for if their be xx. ioyntenants & they be diſſeiſed, they ſhall haue in all their names but one aſsiſe, becauſe they haue but one ioynt title. Aſsiſe. Aſsiſe.

And if their bee three ioyntenants, of whome the one releaſeth to one of his fellowes all the right he hath, & afterward the other two be diſſeiſed of the whole, in this caſe they ſhal haue in both their names one aſsiſe of the two parts. And as to the thirde part hee to whome the releaſe was made ought to haue thereof an aſsiſe in his owne name, becauſe as to the third part he is tenant in common.

Alſo as to ſue actions that touch the realtie, there is a diuerſity betweene parceners that are in by diuers diſcents, and tenants in common. For if a man ſeiſed of certaine lands in fee, hath iſſue two daughters & die, and they enter into the lands as coheires, & each of them haue iſſue a ſonne & dy without partition made betweene them, ſo that the Diuerſitie.

the one halfe diſcendeth to the ſonne of the one parcener: & the other halfe to the ſonne of the other, and they enter and occupy in common, and be diſſeiſed, in this caſe they ſhall haue in their two names one aſſiſe, and not two aſſiſes. And yet the cauſe is, though they come in by diuers diſcents, yet they be coheires and parceners. Alſo if two tenants in common of certaine lands in fee, giue the ſame to another man in the taile, or let it to another for tearme of life, yeelding an annuitie or certain rent, or a pouud of pepper, or an hauke, or an horſe, and they be ſeiſed of theſe ſeruiſes, and afterward all the rent is behinde, and they diſtraine for it, and the tenaunt maketh reſcouſe, in this caſe as to the rent & the pound of Pepper, they ſhall haue two aſſiſes, and as to the hauke and the horſe but one aſſaiſe. And the cauſe why they haue two aſſiſes as to the rent & pound of Pepper is for that they were tenants in common by ſeuerall titles, and when they made a guift in the taile or leaſe for tearme of life, ſauing and reſeruing to them the reuerſion and yeelding to them certain rent: this reſeruation is incident to their reuerſion. And becauſe their reuerſion is in cõmon and by ſeuerall titles, euen as their poſſeſſion was before the rent & other things which

Reſcous

may

may be seuered, & which were to them reserued vpon the gift or vpon the lease which bee insident by the lawe to the reuersion, therefore such thinges so seuered bee of the nature of the reuersion.

Wherefore it behooueth that the rent & the pound of pepper which may be seuered to be then in common by seuerall titles. And of this they shall haue two assises, and euery of them in his assise shall make his plaint of the halfe of the rent, and of the halfe of the pound of pepper, but of the hauke and the horse, which cannot be seuered, they shall haue but one assise, for it were an absurditie and thing inconuenient, to make a plainte in assise of the halfe of an hauke, or of the halfe of an horse. In like maner it is of the other rents and seruices that tenants in common haue in ground by diuers titles. Plaintif assise.

And ye shall vnderstand that concerning actions personalls, tenants in cõmon ought to haue them ioyntly in all there names, that is to say of trespas or offences that touch their tenements in common, as of breaking of their houses, breaking of their closses, and pastures, wasting & defouling of their gras, cutting of their woodes & of fishing in their ponds & such other, and they shall recouer ioyntly damages, because the action is in Personall actions. Damages

the

the parſonalitie and not in the realtie.

Tenants in common ſhall haue one action of debt.

Alſo if tenants in common make a leaſe of theire tenements to an other for tearme of years, yeelding vnto him yearly a certain rent, if the rent be behinde, they ſhall haue one action of debt againſt the leſſe and not diuers actions, becauſe the action is in the perſonalitie.

But in an auowrie for the ſaid rent, they ought to be ſeuered, becauſe it is in the realty, as be aſſiſes.

Of Chattels. Chap. 17.

IT is to be known that as there be tenāts in cōmon of lands or tenements: ſo there be tenants in common of poſſeſsions & propertie of Chattels, as wel reall as perſonall. Of reall, as if a leaſe bee made of certaine lands to two men for tearme of xx. years, & whē they be thereof poſſeſſed, the one granteth that, that vnto him belongeth during the tearme to another, hee to whome the grant is made, and the other ſhal holde and occupie in common.

Iointenants of a watd.

Alſo if two ioyntenantes haue the warde of the bodie and of the landes of an heire within age, and the one of them granteth to another that, that vnto him belongeth of the ſame ward, then he to whome the grant

is

is made, & the other that granteth not, ſhall haue and hold it in common.

Of chattels perſonals: as if two haue a ioynt eſtate either by guift or by buying of an horſe, or an oxe, or ſuch like, and the one of thē granteth that, that to him belongeth, heere ſhall the grante, and he that granted not, haue and poſſeſſe ſuch chattel perſonall in common. And in ſuch caſe where diuers perſones haue chattels reals or perſonals in common and by diuers titles if one of them die, the other that ſuruiueth ſhall not haue his fellowes part by the ſuruiuour, but the executours of him that dieth ſhall hold and occupie it with him that ſuruiueth in like forme as their teſtatour did, or ought in his life, foraſmuch as their titles and rights were ſeuerall. Alſo in the caſe aforeſaide, if two haue an eſtate in cōmon for tearme of years and the one doth occupie all and put the other out of his poſſeſſion and occupation, then ſhall he that is put out haue againſt the other a writ *de Eiectione firmæ* for the halfe. In ſemblable maner where two hold the ward of landes or tenements during the nonage of a childe, if one ſhall put out the other of his poſſeſſion, he that is out ſhall haue a writ *de Eiectione cuſtodiæ* of the halfe, becauſe theſe things be chattels reals and may be appor-

A writ de Eiectione firmæ.

De eiectione cuſtodiæ.

tioned & ſeuered. But no action of treſpas lieth for one againſt the other (as for example. *Quare clauſum fregit & herbam ſuam conculcauit & conſumpſit* nor ſuch like actions) for aſmuch as each of them may enter and occupie in common. But if two be poſſeſſed of chattels, perſonals in common by diuers titles as of an horſe, an oxe, or a cowe, if the one take it all to him ſelfe out of the poſſeſſion of the other, the other hath none other remedie, but to take it againe from him that hath done him the wronge, when hee may ſee his time.

In like maner of chattels reals, which may not bee ſeuered, as in the caſe aforeſaide, where two be poſſeſſors of the wardſhip of the body of a childe within age, if one of them ſhall take the childe out of the poſſeſſion of the other, the other hath no remedie by any action at the lawe, but to take the childe out of the others poſſeſſion, when he ſeeth his time,

Forme of pleading.

Finally ye ſhall vnderſtand that when a man in pleading and declaring his cauſe, will ſhew a deede of feoffement made vnto him, or a gift in fee taile, or a leaſe for terme of life of any landes or tenements hee ſhall vſe his tearmes in this wiſe, & ſay, by force of ſuch feoffement, guift or leaſe hee was ſeiſed &c.

But

But where a man will declare or plead a leaſe or graunt made vnto him of a chattell reall or perſonall, then he ſhall ſay by force of which he was poſſeſſed.

Of partition to be made by ioyntenants and tenants in common enacted by 2. eſtates made, the one in Anno 31.H.8. & the other in 32.H.8. Chap.18.

ALl ioyntenants and tenaunts in common, of any eſtate of inheritance in their owne rightes or in the right of their wiues of any lands or hereditaments within this realme of England, Wales, or the Marches of the ſame, ſhall and may be compelled to make partition between them of the ſame which they ſo holde as ioyntenants or tenants in common by a writ *de partitione facienda*, to bee deuiſed in the Chauncery in like maner as coparceners are compelled to doe, and the ſame writ to be purſued at the common lawe. And after ſuch partition made euery of the ſaid ioyntenants and tenants in common, ſhall and may haue ayde of the other: or of their heires, to the intent to deraigne the warranty paramount & to recouer for the rate as is vſed betweene coparceners, after partition made by the order of the common law.

Writ de Partione faciend

Aide praied.

Item in the xxxii. yeare of King *Henrie* the eight, Chap. 32. It was further enacted that all ioyntenants & tenants in common which hold ioyntly or in common for terme of life, yeare or yeares or ioyntenants or tenants in common where one or ſome of thē haue an eſtate for tearme of life or yeares with other that haue an eſtate of inheritāce or freehold in any landes or other hereditaments ſhall be compellable by writ of Partition to be purſued out of the Chauncery vpon their cauſes, to make ſeuerance and partition of all ſuch lands & hereditaments as they hold ioyntly or in cōmon for terme of life, or liues, yeare or years, or where one or ſome of them hold ioyntly or in common for tearme of life or yeares with other that haue an eſtate of inheritance of freeholde. Prouided that no ſuch pertition or ſeuerance be hurtfull to any perſon other then ſuch as bee parties vnto the ſaide partition their executors or aſſignes.

Of Conditions. Chap. 19.

FOr aſmuch as euery eſtate is either pure or conditionall, it were not amiſſe to make ſome declaration of the nature and efficacie of conditions. Wherefore ye ſhall vnderſtand that of conditions, ſome be actuall

tuall conditions, & be called expreſſe conditions, or conditions in deede, and other ſome be conditions in law, which be called in latin *conditiones tacitæ ſiuæ conditiones implicitæ*, becauſe they be ſecretly emplyed by the law and not expreſſed.

Diuiſion. Conditions in deed be ſuch as be knit & annexed by expreſſe wordes to the feoffement leaſe or graunt eyther in writting or without: as for example, If I infeoffe a man of certaine landes reſeruing to me, and my heires ſo much rent yearely to bee paide at ſuch a feaſt, and for default of paiment that it ſhall be lawfull for me to reenter, this is a feoffement vpon condition of paiment. And heere the reentre of the feoffor for the not paiment of the rent ſhal diſſolue and vtterly defeat the feoffement, ſemblable it is of guifts in taile, leaſes, &c. But if the condition be, that for default of paiment of the rent, it ſhall be lawfull for the feoffor to enter againe into the lands, and to hold them till he be contented & ſatisfied of the rent: this condition not performed doth not diſſolue nor vndoe the feoffement, but onely giueth to the feoffour an authoritie to retaine the lands (as it were by way of diſtres) till he hath leuied the arrerages of the rent. And ye ſhall well marke and obſerue, that con-

Diſtres. conditions be ſometime made to be perfor-
med on the feoffees behalfe, and ſometime
on the feoffors behalfe. On the feoffees be-
halfe, as when I enfeoffee you of landes or
tenements vpon condition that you ſhall
doe ſuch an act, as to pay vnto mee or mine
heires ſuch an annuel rent.

On the feoffours behalfe, as when I make
a feoffement vnto you vpon condition that
if I pay or cauſe to be paid vnto you before
Tenants in morgage. ſuch a day ſuch a ſumme of money, then it
ſhall be lawfull for me to enter againe and
retaine my landes in my former eſtate. In
this caſe hee that is the feoffee is called te-
nant in morgage, which is as much to ſay as
ded-gage, and it ſeemeth that the cauſe why
it is ſo called, is for aſmuch as it is doubtfull
whether the feoffour will pay at the day li-
mitted and preſcribed ſuch a ſumme of mo-
ney for the redemption of his landes or not,
for if he doe not his title or intereſt in the
landes thus gaged and oppignorate, is vt-
terly extinct and gone without all hope of
renuing.

Yee ſhall alſo note, that if the morgager
dieth before the day of paiment, his heire
may redeeme the lande verie well euen as
well as his aunceſtour that morgaged the
land might haue done although there be no

men-

mention made of heires in writting.

Alſo if when the money is lawfully by the morgager or his heire tendred & profered, and the leſſour refuſeth to receaue the ſame the feoffour or his heire may enter, and then hath the feoffee no remedie for his money at the common law. Ye ſhall vnderſtand alſo, that ſome conditions be vtterly voide in the law, & of no efficacie, vertue or ſtrength as if a feoffement bee made of landes in fee ſimple vpon condition, that the feoffe ſhall not alien or put away the ſame to none other, this condition I ſay is void, becauſe the feffee is reſtrained of his whole power that the lawe giueth in ſuch caſe vnto him, and which power and libertie, is in maner included in euerie feoffement, yet I may abridge him of part of his power, as to condition with him that he ſhall not alien the lands to ſuch a perſon or ſuch. But of guifts in taile otherwiſe it is, for if I giue landes to a man & to the heires of his body lawfully begotten vpon condition that hee nor his heires ſhall alien the landes to none other perſon, this condition is good and effectuall in the lawe, and if he or his heires contrarie to the condition doe alien them, then the giuer or his heires may verie well enter and retaine the landes for euer, becauſe this condition

Conditions voide.

Giftin vpon c on.

ſhall ſtande with the fore named ſtatute of Weſtminſter the ſecond, which prohibiteth ſuch alienations to be made.

Heereunto haue I ſpoken of conditions in deed, now will I ſhew what be conditions in law that be annexed to any eſtates.

Eſtates vpon conditions in lawe.

Know ye therefore, that if the office of a Parker, Stewart, Conſtable, Bedell, or Bailiffe, or ſuch like office, be granted to a man for terme of his life, though their be no condition at all mentioned in the grant, yet the lawe ſpeaketh of a condition in this caſe, which is that if the partie to whome ſuch office is giuen, ſhall not execute all points appertaining vnto his office accordinglye, by himſelfe or his lawfull deputie, it ſhall bee lawfull for the grantor, to enter & diſcharge him of his office, and this condition, is called a condition in lawe. There bee alſo three other maner of eſtates vpon condition, that is to ſay, conditions againſt the law conditions repugnant, and conditions impoſsible.

Firſt, eſtates vpon conditions againſt the law, be as if a man make a feoffement, giuft, grant or leaſe vpon condition that if the feoffours, donours, grauntours or leſſours kill I. S. which is not the kings enemie, or burne his houſe that then it ſhall be lawfull to the fe-

feoffours, donours &c. to reenter, this condition is voide, and the eſtate is good.

And like law is if ſuch conditions be to be performed of the part of the feoffe grant &c. Conditions againſt the lawe.

But if it be that a leaſe for terme of years be made of land vpon condition that if the leſſees kill I. S. that then hee ſhall haue fee ſimple althogh that he in this caſe performe the condition, his eſtate is nothing thereby enlarged, becauſe the condition is againſte the lawe.

And yee ſhall vnderſtand that where an obligatiō is endorſed with a cōdition which is againſt the law: both the obligation & alſo the condition be clearly void in the law. Obligation.

Eſtates vpon conditions repugnant be as if a feoffement or a guift in taile be made vpon condition that the feoffee or donee, ſhall take no profite or ſhall doe no waſte, & ſuch other like, ſuch conditions be voide, and the ſtate good and effectuall in the law notwithſtanding. Conditions repugnant

Alſo if a leaſe be made for tearme of life vpon condition that he ſhall not do fealtie, that is as a voide condition.

Likewiſe it is if a man that hath nothing in the manour of Sale, granteth a rent charg going out of the ſame vpon condition, that the perſon ſhall not be charged, this grant is good

good and the condition is voide.

Conditions impoſsible

Eſtates vpon conditions impoſsible, be as if a feoffement bee made vppon condition, that if the feoffe goeth not through the ſea on foote to Caliſe in on day, then it ſhall be lawful to the feoffor to reenter, this is a fruſtrate & voide condition, and yet the eſtate is good.

Like law is of a leaſe made for tearme of yeares &c. or an obligation with a condition impoſsible *vt ſupra*, the obligatiō or leaſe is good & the conditiō void to al purpoſes.

An act how ſtraungers ſhall take aduantage of conditions made. An.32.H.8. Chap.20.

IT is enacted that as well perſons, which haue or ſhall haue any guift or graunt of the King by his letters patents of any lands perſonages, titles, or other hereditaments, or any reuerſion of the ſame which did belong to any monaſterie or other eccleſiaſticall houſe diſſolued or otherwiſe come into the Kings hands ſince the 4. day of February in the xxviii. yeare of our Soueraigne Lord King *Henry* the eight, or which at anye time heeretofore did belong to anye other perſon, & after come into the Kings handes as alſo all other perſons being grauntees or aſsignes to the King or to anye other perſon

their

their heires executors, ſucceſſours, and aſſignes, ſhal haue like aduantage againſt the fermours, and their executors, adminiſtratours and aſsignes, by entre for none payemēt of the rent, or for doing waſte or other forfaiture, and alſo ſhall haue the ſame aduantage by action onely of not performing of other conditions, couenaunts or agreements contayned in the indentures of their leaſes or graunts againſt the ſaid fermours, and grantees, their executours adminiſtrators, & aſsignes, as the ſaid leſſours, or grantours themſelues mighte haue had at anye time. And againe mutually & on the other ſide, the ſaid fermours & grantees for terme of yeares, life or liues, their executors, adminiſtratours and aſsignes, ſhall haue like aduantage againſt them for any condition couenant & agreement contained in the ſaide indenture, as they might haue had againſte their ſaid leſſours & grantours their heires, ſucceſſours, all benefites and aduantage of recoueries in value by reaſon of anye warrantie of deede or in lawe by voucher or otherwiſe onely except.

Prouided that this act ſhall not extende to charge any perſon for breach of anye couenant or condition compriſed in any ſuch writing, but for ſuch as ſhall be broken and not

not performed after the firste day of September in the 32 yeare of this King and not before.

Liuery of seisin, & Atturnement Chap. 21.

IN all feoffements, gifts in taile, leases for tearme of an others life, of lands or tenements, there can be no alteration transmutation of possession by the ancient lawes of this Realme, vnlesse there be a certaine ceremony adhibited & solemnised in the presence & sight of neighbors or others, which ceremony is called liuery of sesin.

The maner of liuery of seisin.

And ye shal vnderstand, that this ceremony of liuery of sesin is done whē the feoffour, donour, lessour, or their deputie come with the neighbours solemnly to the lands or tenements, and they put the feoffe donee or leasee in possession of the saide lands or tenementes by deliuering vnto him a clod of earth, or the ring of the dore, or some other thing in the name of the sesin, and for this selfe cause this ceremony of law is called liuery of sesin, that is to say, a tradition or giuing of sesin.

Diuersity betweene possession and seisin.

But this ceremony is not required in leases for tearme of yeares or in leases at will for as much as the lessour in such lease remaineth still seased & the lessee onely hath pos-

poſſeſsion without any liuery of ſeſin, and therefore the termes of the law be that ſuch a man is poſſeſſed, whereas in feoffementes gifts in taile, and leaſes for life, hee is called ſeaſed.

Wherefore if a feoffement or leaſe for life be made of lands or tenements and before that the liuery of ſeaſin be made, the feoffour dieth, the heire of the feoffor ſhall haue the lands, *Per ſummum ius*, that is to ſay, by the rigour of the law, notwithſtanding that the feoffes hath payed to the feoffour the price of the land, and although the feoffe be in poſſeſsion. But otherwiſe it is of a leaſe for tearme of yeares.

A like ceremony is vſed when rente charge, rent ſeruice, rent in groſſe, a villaine in groſſe, common in groſſe, common for beaſts, certain eſtouers, & ſuch other things as paſſe by way of graunt, be graunted, for it is no full and perfite graunt till it be conſignat and ſealed as it were with the ceremony of atturnement. This atturnement is nothing elſe, but when the tenant of land of which a rent graunted, is granted or out of which a rent is granted, doth make ſome euident ſignification that he accepteth the perſon to whome the graunt is made to bee in the ſame reſpect vnto him that the grantour Atur nt

tour was, As for an example if the tenant of the land after he haue heard of the graunte, commeth to the grauntee, that is to wit, to the person to whome the graunt was made, and say in this wise, or in like effect.

How atturnement shal be made.

I agree vnto the graunt made vnto you by such a man, or I am well apayed & contented of the graunte that such a man hath made vnto you. But the most vsuall frequēt forme of atturny is, to say. Sir I atturne vnto you by force of the said graunte, or I become your tenant, or to deliuer vnto the grauntee, a penny, or a halfe penny by way of atturnement.

If a man maketh firste one graunt to one person, & after another to another person, that graunt shall stand to which the tenant will atturne although it bee to the latter graunt.

And ye shal note, that if a man be seased of a manour, which is parcell in demeane, and parcell in seruice, and doth alien the same manour to another, vnlesse the tenant of the Mannour doe atturne the seruices shall not passe, onely tenants at will excepted, for it needeth not to cause them to atturne.

Diuersity.

Note furthermore, there is a great difference betweene giuing a penny in name of seisin,

seſin, and giuing by waye of atturnemente, for when it is giuen by the tenant to thee grauntee in the name of seaſon, it doth not onely imply an atturnement, but alſo it giueth him ſuch a ſeiſin, that if the rent afterward were behinde and not payed, he may now vpon the ſeſin of the penny after a lawfull diſtres taken, and after reſcous made, bring an aſsiſe of nouell diſſeiſin, where as if it were giuen onely by way of atturnement he could not bring the aſsiſe. But his writ of reſcous only if reſcous were made. Aſsiſe. Writ of reſcous.

Alſo ye ſhall vnderſtand, that where lands be deuiſable by teſtament, by the cuſtome of any auncient Borough or Cittie, if the reuerſion of any landes bee by teſtament bequeathed to a man in fee, and the teſtatour which we call the deuiſour dieth, the deuiſee that is to witte, he to whome the deuiſe was made, hath forthwith the reuerſion in him without further ceremonie of atturnement. Likewiſe it is if a man by teſtament doeth bequeath a rent charge that he is ſeaſed of, or of a rent ſeruice, there needeth none atturnement at all. Atturnement.

If two ioyntenants bee of lande and the Lord graunteth the ſeruices to an other, if one of the ioyntenantes atturneth it is enough. Not acquite.

Finally

Finally if a leaſe bee made for tearm eof life, the remainder to another in taile, the remainder ouer to the right heire of the tenant for tearme of life, in this caſe if the tenant for terme of life, will grant his remainder in fee to another by his deede, this remainder paſſeth foorthwith, without any Atturnement, for if any Atturnement were requiſite it ſhould be made of the tenaunt for tearme of life, which in this caſe is the grauntour himſelfe. And in vaine it is that the grantour ſhould be enforced to atturne ſith an atturnement is adhibited and had to none other purpoſe then to haue the conſent and agreement of the particuler tenant to the intent that it may appeare, that he hath notice and knowledge of this graunt, but heere where the particuler tenant himſelfe is the grantour, an atturnement were ſuperfluous, and more then needed.

Note furthermore that where there is Lord and tenant, and the tenant leaſſeth his tenements to a woman for life, the remainder ouer in fee, the woman taketh a husband, and after the Lord granteth the ſeruiſes &c. to the husband, in this caſe during the couerture the ſeruices be put in ſuſpēce. But if the wife die leauing the husband, the husband and his heires ſhall haue the rent

Suſpence

of

of them in the remainder, &c. And in this case there needeth no atturnement by word because the husbād that ought to atturn accepteth the grant of the seruices, the which acceptance is an atturnement in the law.

Of seruice. Chap. 22.

HEtherunto haue I briefly touched and ouerrunne the sundrie kinds & formes of estates. Now forasmuch as there is no tenure but hath vnto him some seruice knit & annexed, it were verie necessary to declare how many kindes of seruices there be, and what seruice is due to euery tenure. For the knowledge heereof yee shall vnderstande that the principall and most common kinde of seruice that the tenant oweth to his Lord is called Knights seruice.

Knights Seruice. Chap. 23.

KNightes seruice includeth homage, fealty, and for the most part escuage, & whosoeuer holdeth his landes by Knightes seruice is bound by the lawe of this realme to doe vnto his Lord homage and fealty & to pay for the moste parte escuage, when it shall be assessed by authority of parliament as hereafter more plainly shall be declared.

Homage is the most humble & reuerent Homage.

ſeruice that a man of free eſtate and condition can doe, for when the tenant ſhall doe homage to his Lord, the Lord ſhall ſit and the tenant then kneele downe before him vpon both knees, holding his hãds betwene his Lords hands & ſay in this wiſe. I become your man from this day forward, of life and of member, & earthly honour, & to you ſhal be faithfull and true, and faith to you ſhall beare for the landes that I claime to hold of you, ſauing the faith that I beare vnto our ſoueraigne Lord the King, & then the Lord ſo ſitting ſhall kiſſe him. But if an eccleſiaſtical perſon, which by his order and profeſſion hath adicted himſelfe to the ſeruice of God inſpeciall, ſhall doe homage to his Lord, he ſhall ſay, I doe to you homage and ſhall be to you faithfull and true, and faith to you ſhall beare for the tenements that I hold of you, ſauing the faith which I owe to our ſoueraigne Lord the King.

How the tenant ſhal do homag.

What a religious perſon ſhal ſaye when hee doth homag

Alſo when a woman not maried, doth homage to her lord, ſhe ſhal not ſay, I become your woman, for it is not conuenient that a woman ſhould be the woman of any other then of her husbande that ſhee ſhall marie, but ſhall ſay euen as the eccleſiaſticall perſon ſaith, I doe vnto you homage &c.

What a woman ſhal ſay

And if perchance a man holdeth ſundrie lands

lands and tenements of ſundrie Lords, and euery of them by Knightes ſeruice, then in the end of his homage making, he ſhall ſay, ſauing the faith that I owe to our ſoueraigne Lord the King, and to mine other Lords.

And none is bound to doe homage to the Lord vnleſſe it be ſuch tenant as hath in the tenancy an eſtate of fee ſimple, or fee taile, either in his owne right, or in the righte of another.

what tenant ſhall doe homage.

For if a woman haue lands or tenements in fee ſimple, or fee taile, which ſhe holdeth of her Lord by Knights ſeruice, and taketh an husband and hath iſſue, in this caſe the husband in the life of his wife, ſhall doe the homage, becauſe he hath a title to haue the lands by the curteſie of England, if he ouerliueth her, & alſo he holdeth thē now in his wiues right, yet before iſſue had betweene them the homage ſhal be made in both their names. But if the woman dieth before anie homage made in her life and the husbande keepeth ſtill the landes as tenant by curteſy now hee ſhall not doe homage to his Lord, becauſe hee hath nowe an eſtate but for tearme of life.

Fealty.

Fealty, is as much to ſay, as fidelity, or faithfulneſſe, in doing whereof the tenant ſhall holde his hand vpon a booke, and ſay thus.

How a tenant shal do fealty.

Heare you this my Lord, I to you shall be faithfull & true, and faith to you shall beare for the lands and tenements which I claime to holde of you, and duelie shall doe to you the customes and seruices which I owe to do to you at the tearmes assigned, as me helpe God. And then he shall kisse the booke, but he shall not kneele as he that doth homage, nor doe such humble or reuerent seruice as is before declared in homage.

And ye shall obserue that homage cannot be done but to the Lord himselfe, whereas the steward of the Lords court or the Bayliffe may take fealty for the Lord. Also tenant for tearme of life shall doe fealty, but homage, as I said he cannot doe.

Diuersity betweene homage & fealtie.

Now as concerning escuage, that is to say, the seruice of the shield, ye shall vnderstand that hee that holdeth his landes by escuage, when the King maketh a voiage royall into Scotlande for the subduing of the Scots, is bound to be with the Kings Maiestie by the space of xx. daies well and conueniently arayed and appointed for the warre. And he that holdeth his lande but by the moytie of the fee of Knightes seruice, is bounde by the force of his tenure to bee with the King by the space of xx. daies, and so proportionably according to the rate and quantitie of his tenure.

But

But now to our inſtitute & purpoſe, after this voyage royall into Scotlande, in which the King goeth in perſon, & after his returne into England againe, a parliament is wont to be ſummoned, in which ſhalbe preſcribed and aſſeſſed that euery perſon that held his land by homage, and went not with the King, neither by himſelfe nor by his deputy, ſhall pay to his Lord in ſatisfaction of his not ſeruing, and according to the taxation heereof euery tenāt ſhal pay to his immediate Lord, whether it be the K. or other after the rate and portion of his tenure, if he holdeth by an whole fee, he ſhal pay the whole eſcuage, if by a moytie the halfe, if by the fourth part of a fee the fourth part &c. And this money thus aſſeſſed is called ſcutage or eſcuage, for which the Lord to whome it is due, may very well for the none paiment thereof diſtraine. But heere it is to be noted, that ſome tenants by cuſtome vſed time out of minde, are bound to pay but the moytie, or the third part of that, which ſhalbe aſſeſſed and limited by act of parliament.

Parliament.

Diſtreſſe of eſcuage.

Yea, and the cuſtome is in ſome place, that to what ſumme of money ſoeuer eſcuage is aſſeſſed, the tenants ſhall pay neuer but ſuch a certaine ſumme of money, and this kinde of eſcuage is called eſcuage certaine, that is

Eſcuage certaine.

to say, where escuage is assessed by the parliament, to a more or lesse summe the tenant to pay to the Lord fiue.s. & no more nor no lesse &c. such a tenure is called Socage tenure, and not Knights seruice, whereas the other is called escuage vncertaine.

Escuage vncertain is alwaies adiudged to be knights seruice.

Finally ye shall vnderstand, that escuage vncertain is alwaies adiudged to be knights seruice, and draweth vnto it, ward, mariage, & relief, but escuage certaine is not knights seruice, but is of the tenure of socage, as shal be heereafter more amply shewed.

Of Ward, Mariage, and Releise. Chap. 24.

EVerie Knights seruice draweth vnto it ward, mariage, and reliefe. Wherefore it is now right expedient somewhat to entreat of them.

Warde.

Ye shall therefore bee admonished that when the tenant which holdeth his lands by Knights seruice dieth, his heire male being at that time within the age of xxi. yeares: the Lord shall haue the ward, that is to say, the custodie or keeping of the lands so holden of him to his owne vse and profite, till the heire commeth to the full age of xxi. yeares. For the law heere presumeth that till he come to his age, he is not able to doe such seruice, as is of this tenure required.

Fur-

Furthermore if ſuch heires be vnmaried at the time of the death of the tenant, then the Lord ſhall haue alſo the ward, and the beſtowing of the mariage of him. Mariage.

But if a tenant by Knights ſeruice dieth, his heire female being of the age of xiiii. yeares or aboue, then the Lord ſhall haue the ward neither of the land, nor yet of the bodie of ſuch an heire, and the reaſon hereof is, becauſe a woman of that age, may haue a husbande able to doe Knightes ſeruice, that is to ſay, to wait vpon the Kings Maieſties perſon, when he goeth into Scotlande with his armie royall. The fulage of a woman

But if ſuch an heire female be within age of xiiii. yeares, and not maried at the time of the death of her aunceſtor, then the Lord ſhall haue the warde of the lande holden of him, till ſuch heire female commeth to the age of xvi. yeares, by force of an act of Parliament in the ſtatute of Weſtminſter. 1. cap. 12.

Note, that there is a great diuerſitie in the law, between the ages of females & of males for the female hath theſe many ages appointed by the law. Firſt at vii. years of age the Lord her Father may diſtraine his tenants for aide to mary her. Secondly at ix. yeares of age, ſhe is dowable. Thirdly at xii. Diuerſity of age.

yeares ſhee is able to aſſent to matrimonie. Fourthly at xiiii. yeares ſhe is able to haue her land, and ſhall be out of ward, if ſhe be of this age at the death of her aunceſtour. Fiftly at xvi. yeares ſhe ſhall be out of ward though at the death of her aunceſtour, ſhe was within the age of xiiii. yeares, Sixtly, at xxi. yeares ſhe is able to make alienations of her landes or tenement. ¶ Whereas the man hath but two ages, the one at xiiii. yeares to haue his lands holden in Socage, and to aſſent to matrimonie, the other xxi. to make alienations.

Age of a woman.

The age of a man.

Ye ſhall vnderſtand that by the Statute of *Merton*, 6. Chapt. it is enacted, that if in caſe the Lordes doe marrie their wardes to villaines or others (whereby is diſparagement,) if ſuch heires ſo maried be within the age of xiiii. yeares, or ſuch age that the ſaid ward cannot conſent to the mariage, then if the friendes of this heire complaine, and feele themſelues grieued with this vnmeete mariage, the next of kinne to the heire, vnto whom the heritage cannot diſcend, may enter into the landes, and put out the Lorde which is gardeine in chiualrie, & if the next kinſman will not thus doe, another kinſman of the enfant may doe it: And ſhall take the iſſues and profites to the behoofe and vſe of the

the heire, and ſhall yeelde accompt thereof vnto him when he commeth to his full age. A compt giuing.

Alſo there be diuers other diſparagements which be not expreſſed in the ſaide ſtatute, as if the heire being within age of conſent, and in ward, be maried to a decrepit perſon or cripple as to one that hath but one foot, or one hand, or that is a deformed creature or hauing any horible diſeaſe or continuall infirmiment. All theſe and ſuch like be diſparagements. diuers diſparagements.

But heere alſo ye ſhall vnderſtand, that it ſhall be ſaid no diſparagement, vnleſſe the heire be ſo maried when he is within age of diſcretion, that is to ſay, within the age of xiiii. years. For if he be of that age or aboue and aſſenteth to ſuch mariage, it is no diſparagement, neither ſhall the Lord for ſuch mariage loſe his ward, becauſe it ſhalbe reputed and aſſigned to the folly of the heire being of age of diſcretion, to conſent to ſuch mariage.

Now if the Lord, then being gardeine offer to the heire being his warde, a conuenient mariage without diſparagement, & the heire refuſeth it, as he may at his choiſe and election very well doe, then the Lord ſhall haue the value of the mariage of ſuch heire, when he commeth to his full age. But yet if Value of mariage.

he

he marie himselfe being so in warde against the will of his gardeine, then hee shall pay the double value by force of the statute of *Merton* before remembred.

Duble value of marige.

And ye shal note, that if lands holden by knights seruice doe discend to an infant or childe within age from his mother, or from any of his auncestors his father being yet aliue, in this case the Lord shall not haue the mariage of his heire, for during the life of his father, the sonne shall be ward to no man.

One shal not be ward liuing his father.

Finally, it is to be knowne that he which is gardein in chiuelry in right, maye before he hath seased the ward, grant the same eyther by deede or without deede to an other man, and then he to whome such a grant is made, is called gardein in fait.

Now as touching reliefe, ye shall knowe that if a man holdeth his lande by knightes seruice and dieth, his heire being of full age (the full age of the male is xxi. years, & the female xiiii.) then the Lorde of whome the land is holden shal haue of the heire reliefe.

Note ye that all Earles, Barons, or other the kings tenāts (holding of him in chiefe by knights seruice) which die, their heire being of full age at the time of their deaths, that is to say xxi. years of age they ought to pay the old reliefe for their inheritance, that is

the

the heire or heires of an Earle, for an whole Earledeme 100 pound. The heire or heirs of a Barran for an whole Barany an hundreth markes. The heire or heires of a Knight an hundreth ſhillings, and hee that hath leſſe ſhal giue leſſe according to the old cuſtome of fees, like law is obſerued of al others that hold of any other lords immediatly *vt ſupra.*

Alſo a man may hold lands of a Lord by two knights fees, & then the heire being of full age at the death of his aunceſtor, ſhall pay to his Lord for reliefe x. pound.

Seruice of Caſtell guarde Chap. 25.

YE ſhall vnderſtande that a man maye hold by knights ſeruice, & yet not hold by eſcuage, nor ſhall pay any eſcuage, for he may hold by caſtle garde, that is to ſaye, by ſeruice to keepe a tower of his Lords caſtel, or ſome other place vpon a reaſonable warning, when his Lorde heareth that enemies will come, or be already come into Englād.

This ſeruice is alſo knights ſeruice, and draweth to it ward, Mariage & Realiefe, as in all caſes the cōmon knights ſeruice doth. Ground in the Lawe.

Of graund Sergeantie. Chap. 26.

THere is alſo another kind of knightes ſeruice, which is called graund ſergeanty

ty, that is where a man holdeth his lands or tenements of the King by such seruice as he oweth in proper person to doe, as to beare the banner of our Soueraigne Lorde the King, or his speare, or to conduct his hoast, or to be his Marshal, or to be the sewer, caruer or butler, at the feast of the coronation, or to be one of the chamberlaines of the receite of the eschequer, or to doe like seruice to the King in proper person, such maner of seruice I say is called graund sergeanty, that is to say, a great or high seruice & the cause why it is so called, is because it is the moste honorable and most worthy seruice that is, for hee that holdeth by escuage, is not appointed by his tenure, to do any other more speciall seruice then an other is bound that holdeth by escuage, but he that holdeth by grand sergeanty, is bound to doe some speciall seruice to the king.

The moste high seruice.

Also if hee that holdeth of the King by graund sergeantye dieth his heire being of full age, then the heire shal pay to the King for reliefe not only an hundreth shillings, as he that holdeth by escuage shall doe, but moreouer the cleare yearely value of those landes and tenements which he so holdeth of the King by graund sergeanty.

Reliefe of the tenant by grand sergeaty.

Furthermore ye shall obserue, that in the mar-

marches of Scotland ſome men hold of the King by cornage, that is to ſay, blowing of a horne, to the intent to warne the men of the Countrie when they heare that the Scots or other their enemies be comming, or bee already entred into England, which ſeruices is alſo a kind of graund ſergeantie. Tenant by cornage.

Graund ſergeanty therefore is as much to ſay in latin, as *Magnum ſeruicium*, that is to ſay a great or high ſeruice, like as pety ſergeanty, is called *paruum ſeruicium*, that is to ſay a little or ſmall ſeruice. Diffinition of ſergeanty.

But to reuert againe to the matter, yee ſhall note that if any tenant holdeth of any other Lord then of the King by ſuch ſeruice of cornage, then it is no graund ſergeantye, but yet neuertheles, it is knights ſeruice, & draweth to it ward, mariage and reliefe, for this is a rule infallable that none can holde by graund ſergeantie but of the Kings Maieſtie onely.

Finally ye ſhall vnderſtand that all they which holde of the King by this ſeruice called graund ſergeanty doe holde of the King by knights ſeruice, and by vertue of this tenure the King ſhal haue of them ward, mariage, and reliefe, but eſcuage yet he ſhal not haue of them, vnleſſe they holde by eſcuage of him by expreſſe ſpeciall words. Rule in the lawe.

Of

TEnant by petite sergeantie, is he that holdeth his lande immediately of our soueraign Lord the K. by this maner of seruice to pay to the K. yearely either a bowe, a speare, a Dagger, a payer of Gauntlets, a payre of Spurres of Gold, a Shaft, or such other smal things appertayning to the warre, and this seruice is in effect but socage, because that such a tenant is not bound by his tenure to goe nor doe any thing in his own proper person, touching the warre, but onely to render & pay yearely certaine thinges to the King as a man ought to paye a rent. Wherefore this seruice of petite sergeantie is no knights seruice, but yet yee shall note, that a man cannot holde neither, by petite sergeantie, neither by grand sergeantie, but of the King onely.

Petite sergeanty is socage in effect.

Homage aunceſtrell. Chap 28.

TEnaunt by homage aunceſtrell, is hee which holdeth his land of his Lorde by homage, & both he & his aunceſtors whoſe heire hee is, haue holden the ſame lande of the ſaide Lord, and his aunceſtors time out of minde by homage, and haue done vnto them homage and this is called homage aunceſtrell, by reaſon of the long continuance: which hath beene by title of preſcription, as well concerning the tenancy

nancy in the blood of the tenant, as concerning the lordſhipe in the Lord. And this ſeruice of homage anceſtrell, draweth vnto it warrantie (that is to ſay, if the Lord which is nowe in life, hath once, receiued the homage of his tenant, he ought to warrant the ſame tenant what time ſoeuer he ſhal be impleaded or ſued, for ſuch lands ſo holden of him by homage aunceſtrell.

Warranty becauſe of homage aunceſtrell.

Moreouer ſuch ſeruice of homage aunceſtrell draweth vnto it acquitall, that is to ſay, the Lord ought to acquite the tenant againſt other Lords that can demaund anye manner of ſeruice of the tenancie.

Wherefore if in this caſe the tenant which holdeth by homage aunceſtrell, bee impleaded of his lands, & voucheth, or calleth his lord to warrantie, who commeth in by proceſſe, and demaundeth of the tenant what he hath to bind him to the warrantie, and the tenant ſheweth how he & his aunceſtours, whoſe heire he is, haue holden his lands of him and of his anceſtours time out of minde, ſurely the Lord if he cannot deny this, and if hee hath receiued the homage of ſuch a tenant, is bound by the law to warrant him his land, ſo that if the tenaunt loſe his landes in defaulte of the Lord thus vouched, that is to ſay, called to warrantie, hee

ſhall

ſhall recouer againſt him as much in value of thoſe lands & tenements which the Lord had at the time of calling to warranty or at any time after. But if the Lord neuer receiued the homage of his tenant, then he may, very well whē he is thus vouched diſcliame in the Lordſhip or ſigniory, and ſo put out the tenant of his warranty. Wherefore yee ſhall note that in euerie cauſe where the Lord diſclaimeth in this ſigniory in court of record, his ſigniory or lordſhip is extinct and the tenaunt ſhall holde from thencefoorth of the next Lord to him that thus diſclaimeth.

Thus ye perceaue that homage auncеſtrell is not, but whereas is a longe continuance, as well in the blood of the tenant in reſpect of his tenancy, as in the blood of the Lord in reſpect of his ſigniory. Wherefore if the tenant doth once alien his landes to another, although he purchaſe the ſame againe, yet he ſhall not holde any longer by homage auncеſtrell becauſe of his diſcontinuance, but ſhall hold it now by the vullgar and accuſtomed age.

Of Liueries. Chap. 29.

Tenant in chiefe of the King.

WHen one dieth which held of the King by Knightes ſeruice in Capite,

pite, that is to say in chiefe, his heires being within age, the King (as before is declared) shall haue the wardship and custodie, as wel of the lands as of the body, that is to wit the mariage, if he be vnmaried. But if the heire be of ful age at the death of such ancestour, yet shall the King by his prerogatiue royall haue primer seisin of all the landes, tenements, and other hereditaments, whereof such his tenant was seised in his demeane as of fee, And if such an heire wil enter into his lands when he commeth to his full age before he sue his liuerie and receaue seisin by the King, no free holde shall accrew nor growe vnto him, but he shall be deemed an intruder into the Kings possession, yea, and if he die so seised in the meane time, his wife shall haue no dowrie of such landes, wherefore it behoueth in any wise, that such heire as well male as female, comming to full age before he or she enter into their land, to sue liuerie. The maner and forme whereof according to the act of parliament lately promulgated and set foorth, I intende briefly to receite.

Primer seisin.

Intruder vpon the Kings possession.

How heires ought to sue their liueries, enacted 33. *H.* 8. *cap.* 21. *Chap.* 30.

NO person or persons hauing landes or tenements aboue the yearely value

of fiue pounde ſhall haue any liuery before inquiſition or office found before the Eſchetor or other commiſſioner, by vertue of the Kings writ of *Diem clauſit extremum*, or commiſſion directed out of the Chauncerie or other Courtes, hauing authority to make ſuch a writ or Commiſſion, which ſhall not paſſe out of the ſame but by warrant, or bill aſſigned, and ſubſcribed by the Maiſter of Wards or Liueries, the Surueior, Atturney & recoueror of the ſaid court, or three, two, or one of them to be directed and deliuered to the Chauncelor of England, or to any other Chancelor, or officer hauing power to award ſuch writs, and for the writting and ſealing of the ſame ſhall be paide of the accuſtomed fees. But if the lands exceede not the ſaide yearely value of fiue pound, then they ſhall pay for the ſeales of euerie ſuch writ or commiſſion eight pence, and for the writting ſix pence and not aboue.

Writ of diem clauſit extremum.

And the inquiſitions and offices heerevpon found, ſhall be returned by the ſaide eſchetours, or Commiſſioners into the ſame Courte from whence the writ or commiſſion was awarded, which done the Clarkes of the petite bagge ſhall receiue the ſame offices, & make a tranſcript thereof to the Maiſter of the Wardes, and Liueries. And then the

the ſaid Maiſter and the ſuruiuor, atturnie and generall receiuor, or three of them, whereof the Maiſter or ſuruiuor to be one, ſhall couenant & indent with ſuch perſons for their liuerie of the Caſtels, Manoures, Lordſhips, lands, tenements, and hereditaments, compriſed or not compriſed in ſuch offices, and ſhall make & ſet a rate & price of the ſame, and appoint the daies of payment thereof by obligation to be taken for the ſame to the King.

And euerie bill, for any ſpeciall or generall liuerie aſſigned by the hands of the ſaid Maiſter, Suruiuor, Atturney, Receiuor, or three of them, whereof the Maiſter, or Suruiuor to be one, ſhalbe warrant ſufficient to the Lord Chaunceler, or other officer, hauing power to paſſe liueries vnder any of the Kings ſeales accordingly. In which caſe the Clarkes, of the pettye bagge or other Clarkes, by whome the liueries be written, ſhall receaue as well for themſelues as for other ſuch fees as hath beene accuſtomed.

Item euerie perſon may ſue at his pleaſure a generall liuerie for any manours, landes, tenements, rents, reuerſions, remainders, or other hereditamentes, whereof the cleere yearely value ſhall not exceede xx. pound, General liuery.

Prouided that an office be thereof founde, & a warrant first obtained of the said Maister and others as is aforesaid.

And where such generall liuerie is sued, if the landes exceede the yearely value of fiue pound they shall pay for the Seale xx. shillings foure pence, and all other fees accustomed as afterward shalbe declared. But if they exceed not the yearely value of fiue pound, they shall pay but these fees following, that is to say, for the seale of the liuerie xii. pence. To the Clarks of the petie bagge for the writting, and the inroling xx. pence. For the respect of the homage in the Hanapar eight pence. To the Lord great Chamberlaine xx. pence. To the Maister of the Rolles xx. pence. And the Clarke of the Liueries for the warrant and inrolling of the Liueries xx. pence.

Respect of homage.

Item no person or persons shall pay in the eschequer or any other courtes for the respect of homage for any landes or hereditaments not exceeding the yearely value of fiue pound aboue eight pence. And for the entring thereof and warrant of attourney aboue foure pence.

And the value of such landes and hereditaments not exceeding the yearely value of xx. pound shall be taken as it is limited in the

the offices founden thereof, except by the examinations & certificate of the ſaid Maiſter, ſuruiuor, atturney, & receiuer or three of them, it ſhall otherwiſe appeare and be declared in any of the Kings courts.

Paine of forfait.

Alſo no Eſcheatour ſhall ſit onely by vertue of his office, for inquirie of the tenure title or value of any landes or other hereditamentes holden of the King, being of the yearely value of fiue pound or aboue without the Kings writ to him directed, vpon paine to forfaite fiue pound for euerie time he ſhall ſo doe. Neither ſhall he take for the finding of any office of lands not exceeding the yearly value of fiue pound aboue xv. s. that is to ſay, vi.s. viii.d for his owne fee, & iii.s.iiii.d. for the writting of the office. And for the charges of the Iurie iii. s. And for the officers that ſhall receiue the offices in anie court of record ii. ſhillings vpon paine that the Eſcheator doing otherwiſe, ſhal for euerie time forfaite fiue pound. And vpon like paine the officers of euery court of recorde where ſuch inquiſitions ſhall be retourned, being offered vnto them, within one moneth next after the finding thereof, ſhall receiue them. The one moytie of all which forfaitures to the King, and the other to the partie that will ſue for the ſame &c.

Fees of office.

And they which heereafter ſhall be in caſe to ſue liuerie, whoſe landes and tenements exceede not the yearly value of fiue pound may lawfully ſue foorth that generall liuery by warrant from the ſaid Courts as is aforeſaide, although none other inquiſition be thereof had nor certified, paying neuertheles the fees aboue remembred.

Finally, euery perſon ſhall ſue foorth his patent for his liuerie, within three moneths next after the aſſignement of his bill, or els his bill aſſigned to be void & of none effect.

Heereafter enſueth the fees accuſtomed of the generall liueries.

Firſte to the clarkes of the pettie bagge, for the reſpect of homage & fealtie the writing & enrolling xiiii. s. ii. d. To the Lorde great Chamberlaine xl. s. To the maiſter of the Rolles iii. li. To the clarks of the liueries for writting of the Indentures and Obligations, xx. s. beſide counſell.

The fees of the ſpeciall liuerie accuſtomed to be paide be theſe following, that is to ſay, for the ſignet iii. li. x. s. For the priuie ſeale xxx. s. for the greate ſeale xliii. s. viii. d. To the clarks of the petie bagge xl. s. To the maiſter of the liueries clarkes xl. s. for inrolement of the knowledge of the Indenture xii. s, To the Lorde greate cham-

ber-

berlaine of England xl.s. for the write of the alowance for the ſame liuery x.s.vi.d. And note ye that ſometime in ſpeciall caſes the fees be more, and ſometime leſſe, as the caſe and matter doth require.

Hetherto haue wee briefly touched all kinds of Knights ſeruice, & things incident to the ſame. Now will we with like briefnes declare the other kindes of ſeruices which commonly be compriſed vnder the generall name of ſocage. For all lands or tenements, eyther they be holden by knights ſeruice, or elſe by ſocage tenure, or at leaſt by the nature of ſocage tenure, which in effect is all one. Wherefore firſt we ſhall define what ſocage is in the proper ſignification, which done we ſhall peruſe the other kinds of ſeruice which be of the nature of ſocage tenure

Of Socage. Chap. 31.

SOcage is properlye where the tenant is bounde to come with his yoke, that is, with his plowe to eare and ſowe a parcell of the demeane lands of his Lord, which ſeruice in auncient time was verie common, but now by the mutuall conſent, both of the Lord and the tenant, it is conuerted for the moſt part into a yearely rent. Howbeit, the name of ſocage abideth ſtill. Wherefore

What ſocag tenure is.

now, all that is not knights seruice, is called by the name of socage.

So that if a man holdeth by fealty onely, or by fealty and homage for all manner of seruice, it is but socage tenure, for homage alone maketh not knights seruice, also if a man holdeth by escuage certaine as I haue said heretofore, he holdeth in effect but by socage.

Garden in socage.

Now whereas a man holdeth his lands by socage and dieth, his heire being within the age of xiiii. yeares, the Lorde shall not haue the ward but the next of kinne to the heire, to whome the heritage cannot discend, shal haue the title and wardshipe as well of the land, as of the heire, till the heire come to the age of xiiii. years, and such tutor or gardeine is called gardaine in socage, and shall render accounts to the heire of the issues & profits that hee hath receiued of the landes during such time, deducting his reasonable costes & expenses, so that he shall not haue the wardshipe to his owne vse and profite, as the Lorde which is gardaine in chiualrye hath. And in case the gardaine in socage dieth before he hath made his accounte, the heire is without remedie, because no writte of account, lyeth against the executors but for the King onely.

Finally

Finally, ye ſhal vnderſtand that when tenant in ſocage dyeth, the Lord of whom the land is held ſhall haue reliefe, that is to ſay, the value of the rent that is yearely due vnto him of the tenancie, beſide the yearely rent, ſo that in effect after the death of his tenant, he ſhall haue of the heire two rents, ſaue that for the reliefe hee maye diſtraine forthwith, but for the accuſtomed rent hee cannot diſtraine till the vſuall daye of payment be come. Rent. Diſtreſſe.

Franke almoigne. Chap. 32.

TEnaunt in franke almoigne, that is to ſay, in free almes, is where a Biſhoppe, Deane, or any other eccleſiaſticall perſon holdeth of his Lorde in pure and perpetuall almes, and ſuch tenure began firſte in olde time after this manner. When a man was ſeaſed in aucient time of certaine landes or tenements in his demeſne as of fee, & of the ſame tenementes enfeoffed an Abbot & his couent, or a Prior and his couent, or any other perſon eccleſiaſticall, as a Deane of a Colledge, Maiſter of an Hoſpitall, or ſuch like, to haue and to hold the ſame landes to them & to their ſucceſſours for euer in pure and perpetual almes, for in franke almes in theſe two caſes the tenements ſhuld be holden The firſt foundation of frank almoigne.

den in franke almoigne.

By force of which tenure they that holde in franke almoigne after this ſorte be bound of right before God, to make oriſons and prayer, and to doe other diuine ſeruices for the ſoules of their grantors and feoffors, and for the ſoules of their heires which bee dead and for the proſperous eſtate of them and their heires, whileſt they be a liue. And becauſe of right they be bound to this diuine ſeruice, they be diſcharged by the law to do any other prophaine or corporal ſeruice, as fealtie or ſuch other like.

Tenant in franke almoigne ſhall do no fealty.

But neuertheleſſe if ſuch as hold their tenements in franke almoigne, doe omit and leaue vndone theſe deuine ſeruices whereunto they be bound before God, the Lorde cannot diſtraine them, nor yet compell thē by anye other meanes by the courſe of the common lawe, but the onely remedy is to complaine of them to their ordinary, who of right ought to compell ſuch eccleſiaſticall perſons to doe the diuine ſeruice due as aforeſaide.

Tenant by diuine ſeruice.

But heere yee ſhall note that if a Parſon of a Church or any other eccleſiaſticall perſon did before the ſtatutes of diſſolution of Abbeyes, monaſteries &c. hold of the Lord by certaine diuine ſeruice to be done, as to

ſing

ſing maſſe euery friday in the weeke, or *Placebo & dirige*, or to find a prieſt to ſing maſſe, or to diſtribute in almes 100. pence to 100. men at ſuch a day, in all theſe caſes if ſuch diuine ſeruice bee vndone, the Lorde may very well diſtraine, becauſe the ſeruice is put here in certaine.

Diſtreſſe for diuine ſeruice.

Now as I ſaide before that if in old time a man did infeoffe ſuch eccleſiaſticall perſon after ſuch ſorte he ſhould hold his lands in frank almoigne. But at this day it is other wiſe for by the reaſon of the eſtatute called, *Quie emptores terrarum. Weſtmin.* 3. *Chap.* 1. No man can alien nor grant lands or tenemẽts in fee ſimple, to hold of himſelfe, ſo that now if a man being ſeaſed of landes in fee ſimple graunteth the ſame by licence to an eccleſiaſticall perſon in franke almoigne, theſe words franke almoigne be voide, and the eccleſiaſticall perſon ſhal hold them immediately of the lord of the feoffor by the ſame ſeruices that the feoffor held, ſo that no man can hold in franke almoigne but by force of a grant made before the ſaid ſtatute, onely the Kings Maieſt. excepted, for he is out of the compaſſe of the ſtatute.

Finally ye ſhall note that whereas a man holdeth a frank almoigne, his lord is bound by the lawe to acquite him of all manner of ſer-

seruice that any other Lord can haue or demaund out of the saide lands, so that if he doth not acquite him, but suffer him to bee distrained, then hee shall haue against his Lord a certaine writ, called a writ of mesne, and shall recouer against him his damages, and costes of his sute.

Writ of meine.

Of Burgage. Chap 33.

Socage tenure.

A Tenure in burgage, is where an auncient borough is, of which the King is Lord, and they which haue tenements with in the same borough holde the same of the King paying a certaine yearely rent, which tenure in effect is but socage tenure. Likewise it is, where as any other Lord spirituall or temporall is Lord of such borough.

Custome

Heere ye shal note that for the most part such auncient boroughes and townes haue diuers customes and vsages which other townes haue not. For some boroughs haue a custome that the youngest sonne shal inherite before the eldest, which custome is called commonly borough English.

Dower by custome.

Also in some borough by the custome, the woman shall haue for her dowrie all the lands & tenementes whereof her husband was seised at any time during the matrimony and couerture.

More-

Moreouer in ſome boroughs a man may bequeath or deuiſe his lands or tenements by teſtament at the time of his death, & by force of ſuch deuiſe or legacie, he to whome the bequeſt is made after the death of the teſtator which made ſuch teſtament, may by force of this ancient cuſtome enter into the landes ſo to him bequeathed or deuiſed, without any liuery of ſeaſon to him made, or further ceremony of law. Deuiſe by cuſtome of borough.

Howbeit, how and in what maner a man may at this day deuiſe his lands by his laſte will & teſtament by force of a certaine new ſtatute, it ſhall be heereafter declared.

Diuers other cuſtomes in England there be contrary to the courſe of the cōmon law, which if they be any thing probable, & may ſtand with reaſon are good & effectual notwithſtanding they be againſt the common law.

And note that no cuſtome is alowable, but ſuch cuſtome as hath bene vſed by title, of preſcription or time out of minde.

Of villenage, or bond ſeruice. Chap. 34.

A Tenant in villenage is properly when a villaine, that is to ſay, a bondman holdeth of his Lord, whoſe bondman hee is, certaine lands or tenements, according to the

the cuſtome of the manour, or otherwiſe, at the will of his Lord, and to doe his Lord villaine ſeruice, as for to beare and to cary the donge of his Lords out of the cittie, or out of his Lords manour, and to lay it vpon the demeſne landes of the Lord, or to doe ſuch like ſeruice and villaines ſeruice. Howbeit, freemen in ſome places holde their tenements, & lands of their lords by cuſtome by ſuch ſort of ſeruice, & their tenure is called tenure in villenage, & yet they themſelues be not villaines nor of ſeruile condition, but free men. For the land holden in villenage maketh not the tenant a villaine, but contrariwiſe a villaine may make free lande to be villaine land vnto his Lord. As if a villaine purchaſeth lande in fee ſimple or fee taile, the Lord of the villaine may enter into the land ſo purchaſed by his bondman, and put him and his heires out for euer, and this done, the Lord if he will may leaſe the ſame lande to his villaine to holde of him in villenage.

And heere ye ſhall vnderſtand, that ſeruitude or villenage, is the ordinance not of the law of nature, but of that law, which is called *Ius gentium*: by which a man is made ſubiect contrary to nature, vnto an other mans dominion. For he that is a villaine or bond-

bondman either he is so by title of prescription, that is to say, he and his ancestors haue bene villaines time out of mind, or els he is a villaine by his owne confession in some court of record, so that all villaines either they be borne villaines, or els they be made so. They be borne villaines, when their father being a bondman himselfe begetteth them in lawfull wedlocke, either of a free woman or of a bondwoman, for so that the father be bond the issue of him lawfully begotten must needs be bound by the lawes of England, hauing no regard to the condition of the mother, whereas in the ciuill lawe of the Romans it is cleane contrary. For there *partus sequitur ventrem*, that is to say, the seruitud or bondage of the mother maketh the child bonde, and not the bondage of the father. How be it, the bastard sonne of a bond man shall not be bond, and the reason is because a bastard is *Nullius filius*, in the lawe, that is to say no mans sonne. Bastard.

They be made bondmen or villaines two waies, either by their owne proper act, as when a free person being of full age, will come into a court of record, and there confesse himselfe bond to an other man.

Or els by the lawes of armes called, *Ius gentium*, as when a man is taken prisoner in warres

warres & is compelled to ſerue and become the thrall and bondman of him that tooke him, the law calleth ſuch a perſon a villaine, that is to ſay a ſlaue and thrall.

Diffinition of villaines.

And ye ſhall note that villaines be properly called in Latine *ſerui*, becauſe that when they be taken in warre, the Captains be wont not to kill them but to ſell them, & ſo to ſaue their liues, ſo that they be called *ſerui a ſeruando*, that is to ſay of ſeruing. They be called *Mancipia a manu capiendo*, becauſe that they be taken by hand & power of their enemies.

Now as I ſaid by the law of nature, wee are all borne free, but after that by the lawe of Gentility, ſeruitude or bondage did preſ and inuade the world, then enſued the benefite of Manumiſſion, Manumiſſion is, *quaſi de manu emiſſio*, that is to ſay a giuing out of the hand or power. For ſo long as a man is in bondage and ſeruitude, hee is ſubiect to the hand and power of an other, and when he is manumiſſed he is made free, and deliuered from the ſaid power, ſo that a Manumiſſion is to ſay, a writing teſtifying that the Lord hath enfranchiſed his villaine, and all his offspring and ſequell.

Manumiſſion.

Alſo if the Lord maketh to his bondman an obligation of a certaine ſumme of money

or

or graunteth to him by his deed an annuity or yearely penſion, or leaſſeth to him by deed lands or tenements for terme of years any of theſe acts doe imploy an enfrenchiſment.

What acts maketh Manumiſſion in Lawe.

Likewiſe if the Lord maketh a feoffement to his villaine, and maketh vnto him liuerie of ſeiſin, this alſo is an infranchiſement and ſecret manumiſſion. Briefly to ſpeake, wherſoeuer the Lord compelleth his villaine by the courſe of the law to doe that thing, that hee might otherwiſe enforce him to doe or to ſuffer, without the authoritie and compulſion of the law, hee doth by implication infranchiſe his villaine, as if the Lord will bring againſt his villaine an action of dette, an action of accompt, of couenāt or of treſpas, theſe and ſuch like be in the eye of the lawe enfranchiſements and manumiſſions, becauſe the Lorde in all theſe cauſes may haue the effect and purpoſe of his ſute, that is to ſay, the goods, cattels, and correction of his bondman, without the compulſion of that lawe, euen by his owne proper power and authoritie which he hath vpon his villaine. But if the Lord doth ſue his villaine by an appeale of fellonie, the villaine being lawfully endited of the ſame before, this is no tacite manumiſſion or infranchiſement,

Cauſes of infranchiſement.

for the lord though he haue power to beate his villane & to ſpoile him of his goods, yet he cannot by the law of this realme put him to death.

Yee ſhall alſo vnderſtand, that if a mans bondman purchaſe landes, or acquire & get vnto him any other thing, the Lord may foorthwith enter and ſeaſe the ſame into his owne handes. Wherefore if the Lord will bring againſt his villaine a *Præcipe quod reddat*, by which he demandeth againſt his villaine any lands or tenements, this implieth an infranchiſement, for as much as he bindeth him ſelfe to the preſcript and authority of the lawe, whereas hee might vſe his owne authoritie by entering and ſeaſing the ſaid landes.

Finally ye ſhall marke that ſome villaines be called villaines in groſſe, and other ſome be called villaines regardant. In groſſe bee they of which the Lord is ſeuerally ſeaſed, and not by reaſon of any lordſhippe or manor, but they be called regardant which do belong to manour of which the Lord is ſeaſed, and the ſaid villaines haue bene regardant, that is to ſay exſpectant & attendant, time out of minde to the Lord of the ſaide manor in doing vnto him ſuch ſeruices as to a villaine appertaineth.

Of

THere is alſo a certaine kinde of tenure which is called auncient demiſne, and thoſe tenants which hold by this ſeruice, be free holders, and by charter, and not by copie or court rolle, or by the verge after the cuſtome of the manour, at the will of the Lord. And theſe tenants be ſuch as hold of thoſe manours which were S. *Edwards* the King or which were in the handes of King *William* the conquerour, and theſe manours be called the ancient demeſnes of the King, or the auncient demeſnes of the Crowne of England. And to ſuch tenants which holde of ſuch manours be many and diuers liberties giuen and graunted by the law, as to be quite of tolle and paſſage, and ſuch like impoſitions, which be demaunded of men for their goods and cattels ſolde or bought in faires and markets by them, alſo to be quite and free of taxe & tallage graunted by parliament, except that the Kings Maieſtie doe taxe auncient demiſne as to him onely appertaineth, when he thinketh good for great and vrgent conſiderations, Tenants alſo of auncient demiſne ought to be quite of paimentes to the expences and charges of the Knights which come to the parliament, alſo they ought not to be impanelled nor put in iuries, and enqueſts in the countrey, out of

their manors or ſeignory of auncient demiſne, for the landes which they hold of ſuch manor, vnles they haue other landes at the common lawe, for which they ought to be charged. And if ſuch tenants or any of them which holde of the manor of auncient demeſne be diſtrained to doe vnto their Lord other ſeruices or cuſtoms then they or their aunceſtors haue vſed to doe, then may they ſue a certaine writ called a *Monſtrauerunt*, directed to the Lord, commaunding him that he diſtraine them not for to doe other ſeruices or cuſtomes then they haue bene accuſtomed to doe.

writ of monſtrauerunt.

And for further knowledge heereof, yee ſhall vnderſtand that in the Eſcheker there is a booke called domeſday, which booke was made in the time of the ſaide Saint *Edward*. And all the landes which were in the ſeiſin, and in the hands of the ſaid Saint *Edward* at the time of the making of the ſaide booke be ancient demeane.

But the landes which then were in other mens handes though they be written in the ſaid booke be franke free and no auncient demeſne.

Frankefee

Finally it is to be noted, that tenants of ancient demeſne ſhall not be impleaded for their ſaid landes out of the manor whereof they

they ſo hold, and if they be, they may ſhew the matter and abate the writ. But if they once anſwer to the writ and iudgement giuen, then the lands haue loſt the nature and benefite of ancient demiſne, & are become franke fee, that is to ſay, pleadable at the common law for euermore. And thus haue we ſpoken of the diuerſitie of tenures.

Abatement of the writ.

Of Rents. Chap. 36

FOraſmuch as vpon euerie tenure there is commonly reſerued one rent or other, therefore I think it good ſomewhat to treat of rents. But ye muſt vnderſtand that there be ſundrie ſorts of rents. There is one kinde of rent which is called Rent ſeruice. Another which is called Charge, and the third which is named in French Rent ſecke that is to ſay, in latin *Redditus ſiccus*, a drye rent. Now rent ſeruice is ſo called becauſe it is knit to the tenure, and is as it were a ſeruice whereby a man holdeth his lands or tenementes, or at the leaſt way when the rents be vnſeuerably coupled & knit with the ſeruice, as for an example, where the tenant holdeth his lande of the King, or of any other Lord by fealty and by certaine rent, or by homage, fealty, and by certaine rent, or by any other ſortes of ſeruices and

Diuiſion of rent ſeruice.

by certaine rent, this rent is called rent ſeruice. And here ye ſhall note that if this rent ſeruice be at any time when it ought to be paid, behind and vnpaid, the Lord of whom the land or tenement is ſo holden, whether it be in fee ſimple, fee taile, for terme of life, for yeares, or at will, may of common right enter & diſtraine for the rent, though there be no mentiō at all, nor cauſe of diſtres put in the deede or leaſe. I ſaid before that the nature of this rent ſeruice is to be coupled & knit to the tenure. For where no tenure is there can be no rent ſeruice. And therefore if at this day I be ſeaſed of landes of fee ſimple, and make a deede of feoffement of the ſame to another in fee ſimple, reſeruiug by the ſame deede a rent, this can be called no rent ſeruice, becauſe there can be now no tenure between the feoffour and the feoffee. Otherwiſe it is of feoffements in fee ſimple made before the ſtatute of weſtminſter the thirde. chap. 1. called *Quia emptores terrarum*. For before the making of that ſtatute, if a man had made a feoffement in fee ſimple, reſeruing to him a certaine rent, yet though it had bene without deed, heere had bene begun and created a new tenure betweene the feoffour and the feoffee, & the feffee ſhould haue holden of the feoffour,

diſtreſſe of common right.

who

who be vertue of the ſame, might of cõmon right haue diſtrained for ſuch rent. But at this day by force of the ſaid act, there can be no ſuch holding or tenure created or begun and conſequently no rent ſeruice can be at this day reſerued vpon any guift in fee ſimple, except it be in the Kings caſe, who being chiefe Lord of all, euer might and may, giue lands to be holden of him. Thus ye ſee that at this day, no ſubiect can reſerue any rent ſeruice vnto him vnleſſe the reuerſion of the lands or tenements that he ſhal grant be ſtill in him, as where he graunteth them in feet taile, or maketh but a leaſe for terme of life, or for certaine yeares or els at will.

For in all theſe caſes the reuerſion of the fee ſimple remaineth ſtill in him, and therefore if heere be any rent reſerued it is to be called a rent ſeruice, & is of common right diſtraynable though there bee no clauſe of diſtreſſe in the deede of feoffement or leaſe.

But heere yee ſhall aske me, when in the caſe before remembred a man at this day giueth cleane away the lande or tenement from himſelf in fee ſimple, ſo that there is no maner of reuerſion of the ſame remayning in him at all, & yet neuertheleſſe reſerueth vnto him by his deede a certaine rent what maner of rent ſhall this be called: I anſwece

if there be in the deede indented any clauſe of diſtreſſe, that is, that if the rent be behind vnpaied, it ſhall be lawfull for the feoffour to enter and to diſtraine, it is called a rent charge, foraſmuch as the lande is charged therewith, but how? of common right, no, but only by vertue & force of the writting. But on the other ſide if there by no ſuch clauſe of diſtreſſe put in the indenture, then the rent ſo reſerued ſhall bee called a rent ſecke.

Charge.

Likewiſe if a man that is ceaſed of certaine lands, will grant eyther by indenture or by his deede polle, that is to ſay, ſingle & not indented, a yearely rent out of the ſame lands to another, whether it be in fee ſimple, fee tayle, for tearme of life, for yeares, or at will, with clauſe of diſtres, then this rent is called a rent charge, and he to whome ſuch rent is granted, may for default of payment thereof enter and reſtraine. But contrary if the grant be made without any ſuch clauſe of diſtres it is called a rent ſecke, that is to ſay, a dry rent, becauſe he cannot come to it, in caſe it be deemed by way of diſtres, in ſo much that if he were neuer ceaſed of it, he is by the courſe of the cōmon law without remedy. Otherwiſe it is of a rent charge, for heere, he to whom the grant is made when the

the rent is behinde, may chose whether hee will sue a writ of Annuity against the grantor, or distrain for the rent behind, & retain the distres till the time hee be paide accordingly. But he cannot haue both remedies together, but must take him to the one, for if he once recouer by a writ of Annuity, then is the land discharged. And if he sue not his writ of Annuity, but distraine for the arrerages, & the tenant sueth a repleuin, whereupon the other auoweth the taking of the distres in court of recorde, then is the lande charged, and the person of the grantor discharged of the action of annuity. Annuity. Estopple.

Ye shal also vnderstand, that if a man wil that another shall haue a rent charge comming out of his land, & yet will not that his person shall be by anye meanes charged by writte of annuitie, he maye then haue such clause in the ende of his deede. *Prouiso quod presens scriptum, nec quicquam in eo contentum vllo pacto se extendat ad onerandum per sonam meam, per breue seu actionem de annuitate, sed tantummodo veleat ad onerandum terras, fundos, & tenementa mea, de annuo redditu prædicto.* If this or such like clause be added, then the lande is charged and the person of the grantour is discharged. Promise.

Also if a man will make a deede of grant

in this wise, that if Iohn at Stile be not yearly paid at the feast of Christmas for tearme of his life xx. s. that then it shall bee lawfull for the said Iohn at Stile, to distraine for it in the Manor of Dale, this is a good rent charge, because the manor is charged with the rent by way of distres, & yet neuertheleſſe in this case the person of him that made such deed is discharged of any action of annuity, for asmuch as he graunted not by his deede any annuity to the said Iohn at Stile but onely graunted that he might distraine for such yearely rent.

Furthermore ye shall note, that if a man hath a rent charge to him and to his heires comming out of certaine landes, and doeth purchase any parcell of these lands, to him and to his heires, in this case the whole rent charge is quenched and gone, & the annuity also, the cause is this, that a rent charge cannot be in such case apportioned. Otherwise it is of a rent seruice, as for example, if one which hath a rent seruice of xx. pence by yeare, doth purchase parcell of the land, out of which this yearely rent of xx pence is comming, this shall not extinguish or drowne the whole rent, but for the parcell onely. For rent seruice in such case may very well be apportioned & rated according

Extinguish rent.

to

to the value of the land. Yet there bee ſome ſortes of rents ſeruices which in no wiſe can be apportioned. As where a tenant holdeth his land of his Lord by the ſeruice, to render to his Lord yearely at ſuch a feaſte, an horſe lading of gold, a redde roſe, a gyliuer or ſuch like, if in this caſe the Lorde doth purchaſe parcell of the lande thus of him holden, this ſeruice is gone, becauſe ſuch ſeruice cannot be ſeuered and apportioned. Alſo eſcuage is a ſeruice that may be very wel apportioned. according to the difference and rate of the lande.

Rent ſeruice cannot be apportioned

But where any land is holden by homage and fealtie, if the Lorde purchaſe parcell of the land, yet he ſhall haue his homage & fealty ſtill of his tenant.

Ye ſhal marke alſo, that if a man maketh a leaſe of lands to an other for terme of life, reſeruing to him certaine rent, if in this caſe he granteth that rent to Iohn at Stile, ſauing to himſelfe the reuerſion of the ſaide land, this rent is but rent ſecke, becauſe Iohn at Stile that hath the rent, hath nothing in reuerſion of the land.

But if hee graunteth the reuerſion of the land to Iohn at Noke for terme of life, & the tenāt atturneth accordingly, thē hath Iohn at Noke the rent, as rent ſeruice, becauſe he

he hath the reuerſion for terme of his life.

Rent is incident to a reuerſion.

Likewiſe it is if a man giueth lands or tenements in taile, reſeruing to him & to his heires certaine rent, or maketh a leaſe of the land for terme of life, reſeruing certain rent if he granteth the reuerſion to an other and the tenant atturneth accordingly, the whole rent and ſeruice ſhall paſſe by this word reuerſion, beacuſe the rent & ſeruice in ſuch caſe be incident to the reuerſiō, & do paſſe by the grant of the reuerſion. But if he had granted the rent onely, it had beene a rent ſecke.

What remedie a man hath to recouer his rent when it is behinde. Chap. 37.

I Shewed you before, that for a rent ſeruice if it be behinde, ye maye diſtraine in the ground euen of common right, though there be no ſuch clauſe of diſtreſſe mentioned in the deed of feoffemēt, grant or leaſe.

Alſo for a rent charge yé may diſtraine or bring your write of annuitie at your choiſe and election as before is declared. But of a rent ſecke if ye were neuer ſeiſed of it, nor of any parcel thereof ye be without remedy by courſe of the common law, for ye cannot diſtrain for it, nor yet bring your writ of annuity, but if yee were once ſeiſed of it or of parcell thereof, and it is eftſoones behinde, then

then your remedie ſhall be this, ye muſt goe eyther by your ſelfe, or by your deputie to the land or tenement out of which the rent is comming, and there demaund the arrerages of the rent, which if the tenant denie to pay, this deniall is deſſeiſin of the rent. Alſo if the tenant be not then ready to paye it, this counteruaileth a deniall, which is a diſſeiſin.

Diſſeiſin of rent ſecke.

Moreouer, if neither the tenaunt nor no other man be remaining vpon the grounde to pay the rent when ye demaund the arrerages, this alſo is a deniall in the law, and is in very deed a diſſeiſin. And for theſe diſſeiſins ye may haue an aſsiſe of *Nouel diſſeiſin* againſt the tenant and ſhall recouer ſeiſin of the rent and the arrerages and your damages and coſtes of your writ, & of your plee. And if after ſuch recouerie & executiō had, the rent be againe at an other time denyed you, then ye may haue a writ of *Rediſſeiſin* & ſhall recouer your double damages &c.

Aſsiſe.

In rediſſeiſin double damages.

It ſhall be therefore wiſdome for a man when a rent is granted by anye perſon vnto him, to take of the tenant of the land a pēny or an halfe pennye in name of ſeiſin of the rent, and then if at the next day of payment the rent be denied him, he may haue an aſsiſe of *Nouel diſſeiſin*. And ye ſhall note, that there

Three cauſes of diſſeiſin of rent ſeruice.

there be three causes of disseisin of rent seruice, that is to witte, rescous, repleuin, & inclosure. Rescouse is when the Lord vpon the lande holden of him destraineth for his rent behinde, and the distresse be rescewed from him, or if the Lord come vpon the lande to distraine, and the tenaunt or any other man for him will not suffer him, that is called rescous.

Repleuin. Repleuin is when the Lord hath distrained and repleuin is made of the distresse by writte or by plaint. Enclosuer is where lands or tenements be so inclosed, that the Lorde cannot come within the lands or tenements for to distraine. And the chiefe cause why such things so made be disseisin to the lord, is, for asmuch as the Lorde is by this way disturbed of the meane and remedie, wherby he ought to come and haue his rent, that is to wit, by distresse.

Enclosuer.

Foure causes of disseisin of a rent charge. And there be foure causes of disseisin of a rent charge, that is to wit, rescous, repleuin, inclosure, and denier. For denier, or deniall, is as wel a disseisin of a rent charge, as it is of rent secke. Finally ye shal vnderstād, that their be two causes of disseisin of rent secke, that is deniall, and inclosuer.

And two of rent secke. And it seemeth that there is yet another cause of disseisin of all the three rents aforesaid,

ſaide, that is to wit, this, when the Lord commeth to the land holden of him, or when he that hath a rent charge, or a rent ſecke cōmeth to the land to diſtrain for the rent behind, or to demand the rent, and the tenant hearing this, encountreth him, & foreſtalleth him by the way with force & armes, & manaſeth him in ſuch ſorte, as he dare not come to the grounde for to diſtraine for his rent behinde for feare of death or mutilation of his members: This is a diſſeiſin becauſe the partie is diſturbed of his meane, & lawfull remedie whereby he ought to come to his rent.

Finally, ye ſhall obſerue and marke, that by an act of Parliament made in the xxii. yeare of our ſoueraigne Lord King *Henry* the eight, it is lawfull for the executors and adminiſtrators of tenants in fee ſimple, tenants in fee taile, tenants for tearme of life, of rent ſeruices, rent charge, rent ſeckes, and of fee tearmes, for arrerages of ſuch rents as were due vnto their teſtators in their liues, either to diſtraine for the ſame, or at their election to bring an actiō of det, except in ſuch lordſhipes in Wales or in the marches thereof, wheras the tenauntes haue vſed time out of mind, to pay vnto euery Lord at his firſt entrie into the Lordſhip any ſumme of money

Diſtres: & action of debt.

for the redemption of all maner of out cries and penalties incured at any time before their Lords entry.

Alſo by force of the ſaid act the husband which was ſeiſed in the righte of his wife, may after the death of his wife eyther diſtraine or bring an action of det for the arrerages of ſuch rents as were due & vnpaid in her life.

Likewiſe, it is of him that hath a rent for tearme of another mans life, if he for tearme of whoſe life he hath the rent dieth, yet by vertue of the ſaid act he or his executors & adminiſtratours, may eyther diſtraine or bring an action of det for the arrerages due before the death of him, for tearme of whoſe life he had the rent.

How auowries ought to be made of rents, and ſeruices, enacted. An. 21. H. 8. Chap. 38.

WHere any lands be holden of any perſon by rents, cuſtomes, or ſeruices, if the Lord diſtraine vpon the ſame lands for any ſuch rēts, cuſtoms, or ſeruices and repleuin thereof be ſued, the Lord may auowe, or his bayliffe or ſeruant may make coniſance or iuſtifie the taking vpon the ſame lands, as within his fee and ſignory, alledging, in the ſaide auowrie, coniſance or iuſti-

iuſtification, the ſame lands to be holden of him without naming any perſon certaine to be tenant of the ſame, and without making any auowry, iuſtification, or coniſance vpon any perſon certaine. And likewiſe vppon euery writ ſued of the ſeconde deliuerance. And they that make any ſuch auowrie, iuſtification, or coniſance, if the ſame auowry, coniſance, or iuſtification be found for thē, or the plentife be none ſute, or otherwiſe barred, then they ſhall recouer their whole damages and coſtes.

Alſo the ſaid plantifes & defendants ſhal haue like plees, and one aide prier (plees of diſclaimer only except) as they might haue had before the making of this act.

Alſo ſuch perſons as by the common law may ioyne to the plantife or defendaunt in the ſaid writs of Replegiare or ſecond deliuerance, as well without proceſſe as by proceſſe, ſhall from henceforth alſo in this caſe ioyne vnto them aſwell without proceſſe as by proceſſe, and haue like plees & like aduantages in all things (diſclaimer onely except) as they might haue by the common law before this act. Plees in auowrie.

An act for the aſſurance of fermours made. An. 32. H. 8. Chap. 39.

ALl leases hereafter to be made of anye lands, or other hereditaments, by writing indēted vnder seale, for terme of years, or for tearme of life, by any persons being of the age of xxi. years, hauing any state of inheritance either in fee simple, or in fee taile in their owne right, or in the right of their Churches, or wiues, or ioyntly with their wiues shall be good and effectuall againste the lessours, their wiues, heires, & successors, according to the statute compriſed in such indenture of lease.

Prouided that this act shall neither extend to any leases to be made, of anie lands, or hereditaments, being in the hands of any fermours by vertue of any old lease, vnlesse the same olde lease be expired, surrendred, or ended within one year after the making of the new lease, nor yet to any grant to be made of the reuersion of any lands or hereditaments, nor to any lease of such lands or hereditaments, as haue not cōmonly beene letten to farme by the space of xx. yeares, next before such lease thereof made, nor to any lease to bee made without impeachmēt of waste, nor to any lease to be made aboue the number of xxi. years or three liues at the most from the day of making thereof. And that vpon such lease be reserued

Surrender of the old lease

year-

yearely during the same, due & payable to the lessors their heirs & successors, to whom the land should haue come after the death of the successors and to whome the reuersion thereof shall pertaine according to their estates and interests so much yearly rent or more, as hath beene accustomably yeelded for the same, within xx. yeares next before such leases, & that he to whome the reuersion thereof shall pertaine, after the death of such lessors or their heires, shall haue such like remedy and aduantage against the fermours thereof their executors and assignes, as the lessor himselfe should haue had.

Prouided also that the wife bee made partie of euerie such lease as shall be made by her husband, of any lands being the inheritance of the wife, and that euerie such lease be made by indenture in the name of the husband and his wife, and shee to seale thereunto. And that the rent be reserued to the husband and wife, and to the heirs of the wife, according to her state of inheritance therein. And that the husband shall in no wise alien discharge grant, or giue away the same rent reserued, nor anye parte thereof, longer then during the couerture, without it be by fine leuied by the said husband and wife.

The wife shall be partie to the leale.

Prouided furthermore that this act extend not to giue libertie or power to anye persons to take any moe fermes, leases, or taking of any lands or other hereditaments, then they might haue done before the making of this act, nor yet extend to giue any libertie to any parson or vicar of any church or vicarage, for to make any lease or grante of any of their messuages, lands, tenements, tithes, prophets, or hereditaments belonging to their churches or vicarages, otherwise then they might haue done before the making heereof. Anno. 32. H. 8.

What grant by a corporation is good.

It is futhermore enacted, that the grant, lease, gift, or election, of the gouernor or ruler of any hospitall, colledge, deanery or other corporatiō, with the assent of the more part of such of the same as haue voice thervnto, shall be good and effectuall, anye rule or statute made by any founder to the contrary, notwithstanding.

Of falsifying of recoueries by fermours enacted. An. 21. H. 8. Chap. 40.

All fermors or lesses for terme of years, may falsifie for their terme only recoueries had by fayned titles, as well as tenāt in free holde. And the same fermours their executors & assigns shal enioy their termes ac-

according to their leaſes againſte ſuch recoueries euen as if none ſuch had beene ſuffered. In which caſe neuertheleſſe the recouerer, after ſuch recouerie had, ſhall haue like remedie againſt the fermours, by auowry, or actō of debt for rents & ſeruices reſerued vpō the ſame leaſes being due afore the ſame recoueries, & like actions for waſte done after the ſame recoueries, as the leſſour might haue had, if no ſuch recouery had bene had. Furthermore no ſtatute ſtaple, ſtatute marchant, nor execution by *Elegit*, ſhall bee auoided by anye ſuch fained recouerie, but the like remedie ſhall bee had to auoide & falſifie the ſaid recouerie, as is ordained for the fermour or leſſe for terme of years.

Auowry or action of debt.

Of tithes & how they ſhall be recouered, enacted. Anno. 32. H. 8. Chap. 41.

ALL perſons ſhall truely pay their tithes, and offerings, according to the lawfull cuſtomes, and vſages of pariſhes, and places where ſuch tithes or duties be due. And if they doe wilfully withholde any parcell of them: the party whether he be eccleſiaſtical, or lay that ſhould haue them, may conuent ſuch perſons before the ordinarie his commiſſary or other competēt miniſter or iudge of the place where ſuch wrong ſhal be done according to the eccleſiaſticall lawes. And

in euery ſuch cauſe or ſute, the ſame ordinary or Iudge hauing the parties or their procurator before him, ſhal proceed to the determinatiõ therof ordinarily or ſummarily, according to the courſe of the ſaid lawes, & thereupon ſhall giue ſentence according.

And in caſe any of the parties of any matter concerning that ſute doe appeale from the ſentence & diffinitiue iudgement of the ſaide Iudge, then the ſame Iudge forthwith vpon appelation made, ſhall adiudge to the other party the reſonable coſtes of his ſute, and ſhall compell the ſame party appellant to pay the ſame by compulſary proceſſe and ſenſure of the ſaide lawes taking ſuretie of the other partie to whome ſuch coſtes ſhall be adiudged to reſtore the ſame to the appellant, if afterward the principall cauſe of that ſute of appeale ſhall be iudged againſt him. And ſo euerie iudge eccleſiaſticall, ſhal iudge coſtes to the other partie vpon euery appeale to be made in anye ſute or cauſe of ſubtraction or detention of anye tithes or offering, or in any other ſute to bee made cõcerning duties of ſuch tithes or offerings.

And if any perſons after ſuch ſentence giuen againſt them, ſhall obſtinately refuſe to pay their tithes or duties or ſuch ſummes of money ſo adiudged wherein they be condemned,

ned ; then two Iuſtices of the peace of the ſame ſhire , whereof one to be of the Quorum, ſhall vpon certificat or complainte to them made in writting by the Iudge that gaue the ſentẽce, cauſe them to be attached and committed to the next Iayle, there to remaine without baile or mainpriſe, til they ſhall haue founde ſufficient ſureties to bee bound by recogniſance or otherwiſe before the ſame Iuſtices to the Kings vſe for the performance of the ſaide iudgment.

Prouided, that no perſon ſhall be ſued or otherwiſe compelled to pay any tithes for any landes, tenements, or hereditaments, which by the lawes of this Realme are diſcharged, or not chargeable with the paimẽt of any ſuch tithes.

Alſo this act ſhall in no wiſe binde the inhabitants of London, and Suburbes of the ſame, to pay their tithes & offerings within the ſame Cittie and ſuburbs, otherwiſe then they ſhould haue done before.

Furthermore if any hauing an inheritance freeholde, tearme, or intereſt, in any perſonage, vicarage, portion, pention, tithes, oblations, or other eccleſiaſticall profite made or to be made temporall, or admitted to be intemporall hands by the lawes or ſtatutes of this realme, be diſſeiſed or otherwiſe put

from the ſame, or any other perſon claiming to haue intereſt therein, the perſon ſo diſſeiſed or wrongfully put from his ſaide right or poſſeſſion, his heire, wife, and other to whome ſuch wrong ſhall be done, may haue remedie in the Kings temporall courtes, as the caſe ſhall require for the recouery there of by writs originall of *Præc. quod reddat*, aſſ. of nouell diſſeiſin. *Mortdanc. Quod ei deforceat*, writs of dower or other writs originall to be graunted in the Chauncerie, of euerie ſuch perſonage, vicarage, portion, penſion, or other profite eccleſiaſticall, according to the nature of the ſuite thereof. And writs of couenant and other writs for fines to be leuied, and all other aſſurances to be made of any ſuch perſonage or profits eccleſiaſticall, ſhall be deuiſed and graunted there, like as hath bene vſed for fines to be leuied and aſſurance to be had of landes or other hereditaments, & al iudgements giuen vpon ſuch writs originall graunted for any the premiſes, and all fines leuied and knowledged in any of the Kings ſaid Courtes thereof, ſhall be of like force as iudgement giuen, & fines leuied of lands, tenemẽts & hereditaments.

Of Mortuaries enacted. An. 21. H. 8, Chap. 42.

No

NO perſon ſpirituall, their fermours or bailifes, ſhall call any perſon before any iudge ſpirituall, for the recouerie of any Mortuaries, more then is hereafter mencioned, vpon paine to forfaite for euerye time ſo much in value as they ſhall take aboue the ſumme heere limited, & ouer that xl.s. to the party grieued, for which he ſhall haue an action of debt by writ, bill, or information, wherein no wager of lawe, eſſoine, nor protection, ſhall be allowed.

Firſt no mortuarie ſhall be taken of anie which at his death hath no moueable goods vnder the value of x. markes. Alſo no mortuarie ſhall be taken but onely where mortuaries haue bene vſed to be paid, & thereafter the forme heereafter mentioned. Nor in moe places but one, that is to wit, there where his moſt abiding is, & there but one. Nor no perſon ſhall take for the mortuarie of any perſon being at his death of the value of ten marks aboue his debts paid & vnder xxx.li. aboue iii.s. iiii.d. And of the value of xxx. li. & vnder xl, not aboue vi.s. viii.d. And of the value of lx.li. or aboue, of any ſumme whatſoeuer it be, not aboue x.s.

Alſo no mortuarie ſhall be asked nor paied for any woman couert baron, or childe, or any perſon not keeping houſe, or for anie wai-

waifaring man but the Mortuaries of ſuch waifaring men, be anſwerable in that place where they had their moſt dwelling at the time of their death.

Neuertheles ſuch ſpirituall perſon may take any thing, which ſhall bee diſpoſed or bequeathed to him, or to the high aulter of the Church.

Alſo nothing ſhall be taken for Mortuarie in Wales, nor in the marches of the ſame nor in Calis or Barwick, or the marches of the ſame, but only in ſuch places of the ſame where Mortuaries haue bene accuſtomed to be paid, & there but only after the forme aboue ſpecified. Prouided that the Biſhops of Bangor, Landafe, S. Dauids, and S. Aſſe, and the Archdeacon of Cheſter, may take ſuch Mortuaries of the Prieſtes within their dioces and iuriſdictions, as heeretofore haue bene accuſtomed. Prouided alſo that in ſuch places where Mortuaries haue bene accuſtomed to be taken of leſſe value, none ſhall be compelled to pay any other Mortuary or more for any Mortuarie, then hath bene accuſtomed, nor no Mortuarie there ſhall be demanded of any perſon exempt by this act vpon paine afore limited.

Of diſcontinuance. Chap. 43.

It

IT is called a diſcontinuance by the lawes of England, where he that hath the poſſeſſion of landes or tenements for the time preſent, and yet not hauing the fee ſimple in himſelfe, nor in his owne right onely, maketh an alienation of the ſame to another by reaſon weereof he that ſhould haue them after him, and which then hath right vnto them cannot enter, but is driuen to his remedie by way of action, in ſuch wiſe that the ſaid landes be not vtterly ſhifted and gone from ſuch perſon or perſons as haue right vnto them, but be all onely diſcontinued for a time, till the perſon which after the death of ſuch diſcontinuer hath right vnto them, doe continue and bring them home againe, not by entrie, but by ſuite & way of action. As for example a tenant in taile of certaine landes doth enfeoffe another in the ſame, in fee ſimple or fee taile, & hath iſſue & dieth, his iſſue cannot enter into the lands though he hath title and right vnto them, but is put to his action. which is called a *Formedon* in the *deſcender*. And if ſuch tenaunt entaile which maketh ſuch a feoffement, hath no iſſue at time of his death, it is yet neuertheleſſe a diſcontinuance to him which is eyther in the reuerſion or in the remainder, ſo that neyther the one nor the other can enter, but

Formedon in the diſcender.

Formedon in the reuerter or remainder.

but to be driuen to their action he in the reuerſion to his formedon in the reuerter, and he in the remainder to his formedon in the remainder.

In like maner if a Biſhop doth alien lands which be parcel of his biſhopricke & dyeth, this is a diſcontinuance of his ſucceſſor for as much as he cannot enter, but is driuen to his writ of entrie *ſine aſſenſu capituli.*

Entre ſine aſſenſu capituli.

Semblable, if a Deane be ſole ſeaſed of lands in the right of his Deanerie, & maketh ſuch an alienation, this is a diſcontinuance to his ſucceſſour. Alſo if the Maiſter of an hoſpitall alieneth any lands of his hoſpitall, that is a diſcontinuance and his ſucceſſour cannot enter, but is put to his writ, *De ingreſſu ſine aſſenſu confratrum, & ſororum.*

Ingreſſu ſine aſſenſu confratrum & ſororum.

But if a parſon or a vicar of a Church, will alien any of his glebe landes to another in fee ſimple or fee taile, & dieth, or reſigneth his benefice, this is no diſcontinuance to his ſucceſſour, but he may verie wel enter notwithſtanding ſuch alienation made by his predeceſſour. And the higheſt writ that a perſon can haue if his predeceſſour haue alienedhis glebe lande, or loſt it by default, or reddition, as a *Iuris vtrum.*

Reddition that is voluntary yeelding.

And furthermore note, that no tenant of the land can by his or their act, diſcontinue the

the right of him in the reuerſion, vnles it be by feoffement with liuerie and ſeaſon, or els by a releaſe with warranty.

And note that ſuch things as paſſe by way of graunt by deed without liuery and ſeaſon cannot be diſcontinued, as an aduowſon, common, or a villaine in groſſe, reuerſion, rent charge, common for beaſtes certaine, & ſuch other like.

Alſo ye ſhall vnderſtand, that in the xxii. yeare of King *Henry* the eight, it was enacted that no fine, feoffement or other act to be made or ſuffered by the husbande onely, of any landes or tenements being the inheritance or freehold of his wife, during the couerture betweene them ſhould be any diſcontinuance thereof or bee preiudicall or hurtfull to the ſaid wife or to her heires or to ſuch as ſhould haue right, title, or intereſt to the ſame by the death of ſuch wife, but that the ſame wife and her heires, and ſuch other to whome ſuch right ſhould appertaine after her deceaſe, may then lawfully enter into all ſuch lands and tenements, according to their rights and titles therein.

How recoueries by colluſion againſt tenants for tearme of life, is no diſcontinuance. enacted. Anno. 32. H. 8. Chap. 44

Where

WHere diuers persones seased of lands and hereditaments, as tenants by the curtesie of England, or otherwise onely for tearme of life or liues, haue heretofore suffered other persons by agreement or come betweene them had, to recouer the same against them in the kings court by reason whereof, they to whome the reuersion or remainder thereof, hath belonged, haue after the deathes of such tenaunts bene driuen to their actions for the recontinuance and obtaining of the said lands & tenements so recouered, & sometime haue bene clearely disherited of the same, it is enacted that all such recoueries heereafter to be had by agreement of the party, or by couin, or against any such perticuler tenant of lands or hereditaments, whereof he is, or heereafter shall be seased, as tenant by the curtesie of Englande, tenaunt in taile after possibility of issue extinct, or otherwise for tearme of life, shall from henceforth as against such persons to whome the reuersion or remainder shall then appertaine and against their heires & successours be clearely void. Prouided that this act extend not, to any person that shall by good title recouer any hereditaments without fraud or couin, against any such particuler tenant, by reaso

of

of any former right or title, nor yet to auoid any recouery to be had against any such particuler tenant, by the assent and agreemene of those in the reuersion or remainder, so that such assent and agreement do appeare of record in the Kings court.

How wrongfull disseisin is no discent in the law, enacted. An. 32. H. 8. Chap. 45.

WHere diuers persones haue by strength, and without title entered into lands and tenements, and wrongfully disseised and dispossessed the rightfull owners & possessours thereof, and so being seased by disseisin, haue therefore died seased, by reason of which dying seased the parties that were so disseised and dispossessed, or such other persons as before such discent might haue lawfully entred into the saide landes and tenements, be thereby clearely excluded of their entrie into the lande, and put to their action for their remedy and recouerie thereof, it is enacted, that the dying seased hereafter of any such disseisor hauing no right or title therein, shall not be deemed any such discent in the lawe as to take away the entrie of such persons or the heires which at the time of the same discent had good title of entrie into the same. Except

that

that such disseisor hath had the peasiable possession of his lands or tenements whereof he shall so die seised, by the space of fiue yeares next after the disseisin by him committed, without entry or continuall claime, by such as haue lawfull title thereunto.

The limitation of Prescription, enacted, Anno. 32. H. 8. Chap. 46.

NO person shall sue or maintaine anie writ of right, or make any title or claime to any landes, tenements, rents, annuities, commons, pentions, portions, corrodies, or other hereditaments, of the possession of his aunceſtors or predeceſſors, and declare any further seisin or possession of his aunceſtour or predeceſſour, but only of the seisin or possession of his aunceſtor or predeceſſour, which hath bene seised of the same within xl. yeares next before the feast of the same writ, or next before the saide title or claime so to be sued.

Also none shall sue or maintaine any assise of Mordantceſtour, coſenage, ayle, writ of entrie vpon disseisin done to any of his aunceſtours or predeceſſours, or any other action possessary vpon the possession of anie of his aunceſtours or predeceſſors, for lands or hereditaments of further seisin or possession

ſion of them, but onely his ſeiſin or poſſeſſion which was ſeiſed thereof within 50. years next before the feaſt of the originall of the ſame writ. And none ſhall maintaine action for landes or other hereditaments vpon his owne ſeiſin or poſſeſſion therein, aboue 30. yeares next before the feaſt of the originall of the ſame writ.

Limitation of 50. yeares.

Limitation of 30. yeares.

Item none ſhal make any auowrie or coniſãce for a rent, ſuite, or ſeruice, & alledge any ſeiſin of the ſame in his auowry or coniſance in poſſeſſion of his aunceſtours or predeceſſors, or in his owne poſſeſſion, or in the poſſeſſion of any other, whoſe eſtate he ſhall claime to haue aboue 50. yeares next before the making of the ſaid auowry or coniſance. Moreouer all Formedons in reuerter, Formedons in remainder, and *Scire facias* vpon fines of landes or other hereditaments to be ſued, ſhall be taken within 50. yeares next after the title of action fallen. And if any doe ſue any of the ſaide actions or writs for lands or other hereditaments, or make any auowry, coniſance, preſcription or claime for any rent, ſuite, ſeruice, or other hereditaments, and if he prooue that he, or his aunceſtours or predeceſſors were in actual poſſeſſion or ſeaſon therein, at any time within the yeares before limited, if the ſame

Auowry.

be trauerſed or denied by the partie plaintife, demaundant or auowant, or by the party tenant or defendant, hee and his heires
Barre. ſhall from henceforth be vtterly barred for euer, of euerie the ſaid writs, actions, auowries coniſance, preſcription title and claime heereafter to be ſued or made for the ſame lands or other the premiſſes, for which ſuch action, writ, auowrie, coniſance, title or claime heereafter ſhall be ſued or made.

Prouided, that all perſons which nowe haue any of the ſaide actions, writs, auowries, *Scire facias*, coniſance preſcription, title, or claime depending, or that hereafter ſhall ſue or bring any of the ſaid writs, or actions, or make any of the ſaid ouowries, coniſances, preſcription, titles, or claime at any time before the feaſt of the Aſcention of our Lord which ſhall be in the yeare of our lord
Whether eſtate ſhall take effect. 1546. ſhall alledge this ſeaſon of their auncеſtours, or predeceſſors or their owne poſſeſſion and ſeaſon, and alſo haue all other like aduantage in the ſame writs, actions, auowries, coniſances, preſcriptions, and claimes, as they might haue had before the making of this ſtatute. Prouided alſo, that if any perſon be nowe within the age of xxi yeares, or couert baron, or in priſon, or out of this Realme, now hauing cauſe to bring

any

any of the ſaid writs or actions, or to make any auowries, coniſances, preſcriptions, or claimes, it ſhall be lawfull to ſuch perſon, to ſue or bring any of the ſaide actions, or to make any of the ſaid auowries, coniſances, titles, or claimes, at any time within ſixe yeares next after ſuch perſon nowe being within age, ſhall accompliſh the age of xxi. yeares or now being couert baron, ſhall be ſole, or now being in priſon, ſhall be at their liberty, or now being out of this realme, ſhal come and be within this Realme. And that euerie ſuch perſon in their ſaide actions, auowries, coniſances, titles or claimes, to be made ſued or commenced within the ſaide ſix yeares, ſhall alledge the ſeaſon of their aunceſtors, or predeceſſors, or of their owne poſſeſſion, or of the poſſeſſion of thoſe whoſe eſtate they ſhal then claime. And alſo within the ſame vi. yeares ſhall haue like aduantage in the ſame, as they might haue had before the making of this act.

Prouided alſo, that if the ſaide perſons now being within age, or couert baron, in priſon or out of this realme, doe die within age, or being couert or in priſon, or out of this realme or deceaſe within vi. yeares next after they ſhall accompliſh their full age, or ſhall be at large within this realme, or ſhall

become ſole & no determination or iudgement had of ſuch title, actiõs, or rights ſo to them accrewed, then the next heire of ſuch perſons ſhall enioy, like aduantage to ſue demaund, auow, declare, or marke their ſaid titles, claimes or preſcriptions within ſix yeares next after the death of ſuch perſons, as the ſaide infant after his full age, or the ſaide woman couert after the death of her husband, or the ſaid perſon being out of this realme after his repaire or cõming into the ſame, or the ſaid perſon impriſoned after his enlargement and comming out of priſon, might haue had within ſix yeares then next enſuing by force of the prouiſion laſt before rehearſed.

Prouided alſo, that if any perſons before the ſaide feaſte of the Aſcention, ſue any of the ſaid actions, or make any auowrie, title, or claime, & the ſame happen by the death of any the parties thereunto, to be abated before iudgement or determination thereof had, then the ſaide perſons being demandants, or auowants, or making any ſuch coniſance, preſcription, title, or claime, being then aliue, and if not, then their next heires, may commence their action, & make their auowrie, coniſance or claime vpon the ſame matter, within one yeare next after ſuch

ſuch ſuite abated, and ſhall haue like aduantage to ſue demaund auow, declare, or make their ſaid title claimes or preſcription with in the ſaid one yeare, as the demandants in ſuch writ or ſuite abated, or as ſuch as did auow or make coniſance, title claime or preſcription might haue enioyed in the former action or ſuite.

Prouided furthermore, that if any falſe verdict hereafter be giuen in any of the ſaid actions, ſuites, auowries, preſcriptions, titles or claimes, then the party grieued may haue his attiant vpon euery ſuch verdict, and the plaintife in the ſame attaint vpon iudgement for him giuen, ſhal haue like recouery execution and other aduantage as heereafter hath bene vſed. Attaint vpo falſe verdi

Of Fines. Chap. 47.

FInes haue their name, becauſe they make a final end & determination of all ſuites, ſtrifes and debates betweene men. For the due leuying whereof it was enacted in the iiii. yeare of King *Henry* the vii. that they muſt be ſolempnly before the iuſtices of the common place, red and proclaimed the ſame tearme, and three tearmes next following the ingroſſement, at which time all the plees muſt ceaſe. And ſuch fines ſhal

be a ſufficient barre and diſcharge againſt all perſons ſauing women that be couert baron, if ſuch women bee not priuie to the ſame fine, or ſuch as be within age, in priſon, out of the realm, or out of their right minds. But theſe fines ſhal not conclude nor bar all Straungers which haue right to enter or to haue action, if they come within fiue yeares after ſuch proclamations made or (in caſe the cauſe of action falleth vnto them after the fine ſo duly leuied) if they come & commence their action & ſuite within v. yeares next after ſuch cauſe of action to them accrued. And they may ſue againſt the takers of the profites. But if they that haue right thereto be within age in priſon, couert baron, or out of the Realme, or not in their right memorie, then their title or entry ſhall be ſaued vnto them till they be of full age, out of priſon, diſcouered and ſole within the realme, or of right minde, and then within fiue yeares after, their action or entrie, muſt be ſued or made with effect.

Alſo by the ſaid ſtatute it ſhall be a good plee for all ſtraungers to ſay, that they that were parties to the fine nor none other to their vſe, had any thing in the tenements or landes at the time of the leuying of the fine.

Further-

Furthermore in the xxxii. yeare of this King, for the auoiding of certaine doubts & ambiguities, it was enacted, that all fines as well heeretofore leuied, as heereafter to be leuied, according to the saide statute of *Henry* the vii. by any person of the full age of xxi. yeares, of any lands or other hereditaments, being before the fine leuied, in any wise tailed vnto him or any of his aunceſtours in poſſeſſion, reuerſion, remainder or in vſe, ſhall be immediatly after the ſame fine leuied, ingroſſed, & proclamation made a ſufficient barre and diſcharge for euer, as well againſt him, & his heires, claiming the ſame onely by force of any ſuch entaile, as againſt all other to their vſe, ſo that the ſame fines be not leuied to any woman after the death of her husband, contrarie to the ſtatute made the xi. yeare of *Henry* the ſeuenth, of landes and tenements of the inheritance of purchaſe of her husbande or of any of his aunceſtors giuen to her in dower, for tearme of life, or in taile, in vſe, or in poſſeſſion. Except alſo all fines leuied, or to be leuied, of any ſuch landes or hereditaments by the owners thereof by any ſpeciall act of parliament made ſithe the ſaid fourth yeare of *Henry* the vii. be reſtrained from making any alienations, diſcontinuances or other a-

lienations of the same. Also of such lands as be now in suite and variaunce in any of the Kings courts, or whereof any euidences be now in demaund in the Chancery, or which be alreadie recouered. Except also fines leuied, or to be leuied by any person of lands or tenements graunted to him or to his ancestours in taile, either by the Kings letters patents, or by vertue of any act of parliament, whereof the reuersion is in the King. And confirmed in the thirty foure yeare of H. 8.

Of Testaments or last Wills. Chap. 48.

Testamentum in Latin, is as much to say as *mentis testatio*, that is a declaration or witnessing of a mans minde. And there be two sorts of Testaments. The one is called *Testamentum scriptum*, that is, a written Testament, or last Will by writing: and the other is called *Testamentum nuncupatiuum*, a Testament nuncupatiue, which is when a man doth expresse by mouth his last will and testaments without writting, by calling before him certaine of his neighboures, in whose presence he doth signifie by wordes his last minde and Will. And this for the most part men vse to doe, when for feare of suddennesse of death, they dare not abyde the

Diuision.

Written testament.

The testament nuncupatiue.

the writting of their will. And this will (vnleſſe it be in certaine caſes) is as ſtronge and as ſure, as is a Teſtament or laſt will put in writting, and ſealed with the ſeale of the teſtator.

Alſo though a Teſtament by writting be not ſealed with the ſeale of the teſtatour, yet is the Teſtament good and effectuall in the law.

And yee ſhall alſo marke, that where a man maketh once his teſtament & wil, and afterward maketh another will by words, if his laſt will be prooued before the ordinary and by him put in writing & enſealed with his ſeale, ſuch laſt will ſhall auoide the firſt will, vnleſſe it be in ſpeciall caſes, and ſo alwaies the latter will and teſtament ſhall auoid the former.

Finally by an act made the xxi. yeare of K. *Henry* the viii. it was ordained that where part of the executors named in the teſtamēt wherein any landes or tenements be willed to be ſolde by them, refuſe to take vppon them the adminiſtration and the reſidue to take the charge and adminiſtration vpon them, in this caſe all bargaines and ſales in the ſaid lands made only by thoſe executors that tooke the adminiſtration of the teſtament vpon them, ſhould be as good and effectuall,

fectuall, as if all the residue of the executors so refusing had ioyned in the making of the bargaine and sale.

The difference betweene exectors and administrators. Chap. 44.

Affects in the hands of the executors.

EXecutors is when a man maketh his testament and last will, and therein nameth the person which shall execute his testament, then he that is so named, is his executor, and such an executor shall haue an action against euery debtor of his testator, And if the executors haue affets, that is to say sufficient in their hands, then shall euery one to whome the testator was in det, haue action against the executor, if he haue an obligation or specialty to shew. But in euery case where the testatour might wage his law, there no action lieth against the executor.

Executor of his owne wrong.

Administrator is hee, to whome the ordinarie committeth the administration & bestowing of the goods of a dead man, for default of an executor. And actions shall lie against him, and for him as for an executor and he shall be charged to the value of the goods of the dead, and not further, if it be not by his false plee, or for that he hath wasted the goods of the dead. But if the administra-

nistrators die, his executors be not administours, but it behooueth the ordinarie to commit an new administration. Howbeit if a stranger, I meane him that is neither executor named in the testament and last will, nor yet administrator appointed by the ordinay, will take the goods of the dead, and minister of his owne head and minde, without lawfull authority, this person shall bee charged and sued as an executor, and not as an administrator in an action which is brought against him by any creditor. But if the Ordinary make a letter, *ad colligendum bona defuncti*, he that hath such a letter is not administrator, but the action lieth in this case against the ordinary, as well as if hee tooke the goods by his owne hand, or by the hand of any other his seruant, by any other commandement.

An act of the probate of Testaments, made Ann. 21. H. 8. Chap. 50.

NOthing shall be taken by any hauing authoritie to take probation, insinuation, or approbation, of any testament where the goods of the testator, doe not amount aboue the value of a hundreth shilling, except to the scribe for writting thereof vi. d. And for the commission of administration of

of the goods of any dying inteſtate, not being likewiſe aboue a C. s. vi. d. Alſo none hauing power to take probate of teſtamentes ſhal refuſe to approue teſtamēts being lawfully offered vnto thē in writing with waxe thereto affixed ready to bee ſealed, ſo that they be lawfully proued before the ſame ordinarie to be true. And when the goods of the teſtator doe amount aboue an C. s. and not exceede xl. li. none ſhall take for the probation regiſtring ſealing & writting of any ſuch teſtament aboue iii. s. vi. d. whereof to be to thē that haue authoritie to take the probation ii. s. vi. and the other xii. d. to the ſcribe for regiſtrating.

And where the goods amount aboue xl. li. then onely fiue s. to be taken, whereof to be them that haue authoritye to take the probation ii. s. vi. d. & the other ii. s. vi. d. to the ſcribe for the regiſtring, or elſe if hee refuſe that ii. s. vi. d. then hee to haue for euery x. lines euery line contayning in length x. inches a penny.

And they that haue authoritie as is aboue ſaide, ſhall approue inſinuate, ſeale, and regiſter the teſtaments, and deliuer them ſealed with the ſeale of their office to the executors for the ſumme aboue ſaid, and that with conuenient ſpeede without anye fruſtratory delay.

And

And if any person die intestate or the executors refuse to proue the testament, then they hauing authoritie as is aboue said, shal grant the administratiõ of the goods to the widdowe of the person deceased, or to the next of kin or to both after their discretion, taking surety of them for the true administration of the goods and debts, which they shal be so authorised to minister. And where one or diuers claime the administration as next of kinne, which bee egall in degree of kinred, or where any one persõ desireth the administration as next of kin where indeed diuers persons bee in equalitye of kinred, then in any such case the ordinary shall bee at libertie, to take one or moe making requeste. And where diuers require the administration, or where but one or moe of them, and not al being in like degree make requeste, then the ordinary shall admitt the widdow, and him or them onely making requeste or any of them, taking nothing for the same, where the person disseased died not worth 100. s. And if he died worth 100. s. and not aboue xl. li. then ii. s. vi. d. onely to be taken. And the executor or administrator calling to him the dettors two at the leaste: or such persons to whome any legacy was made, and if they refuse them, two next of kinne

kinne to the person deceased, and in their default, two other honneſt persons ſhall by their diſcretions make a true inuentory indented of al the goods, which persons ſwearing before the biſhop or his officers to bee true, ſhall deliuer the one part thereof vnto thē, & the other keep himſelf. And none hauing authority to take probate of teſtamēts vpon paine contayned in this ſtatute, ſhall refuſe to take any ſuch inuentory preſented or rendred to them.

Inuentory of goods.

Prouided, if any perſon ſhall diſpoſe or will by his teſtament any lands or hereditaments to be ſold, that the mony or profits of the ſame, be accounted for goods or cattels.

And they hauing the authority abouesaid vpon the deliuery of the ſeale and ſigne of the teſtator, ſhall cauſe the ſame to be defaſed & incontinent ſhall redeliuer to the executor without any claime & if any require a coppie of the teſtament and inuentorye, then they hauing authority of their miniſters, ſhall without delay deliuer them a copie, taking therefore , or elſe for the regiſtring of the ſame as before, or elſe for euery ten lines a pennie.

Prouided, that where they hauing authority as is abouesaide, haue vſed to take leſſe for the probate of teſtamēts or other things con-

concerning the same, then is here specified, they shall take as they did before this act.

Now if any that haue authoritie to take probate of testaments or their ministers, do attempt against this act, they shall forfaite for euery time to the party greiued as much mony as they shal take contrary to this act. And ouer that x. li. the one halfe to the K. the other to the partie grieued, that will sue by action of debt, bil, information or otherwise in any of the Kings courts, wherein no essoine protection nor wager of the law shal be allowed. And euery of them shalbe charged for himselfe and for none other.

Prouided, that euery one hauing authoritie aboue said, may call before them euery person so named executors, to the intent to proue and refuse the testament, & to bring inuentories and to doe euerie other thinge concerning the same as they might before this act, so neither they nor their ministers shal take aboue the fees limitted by this act.

How landes and tenements may be by testament or otherwise disposed, enacted. An. 32. H. 8.

EVery person hauing lands or other hereditaments holden in socage or of the nature of socage tenure in chiefe, & not hauing any lands or hereditaments holden of the

the K. by knights ſeruice, or ſocage tenure in chiefe or of the nature of ſocage tenure in chiefe nor yet if anye other perſon by knights ſeruice may giue, diſpoſe, & deuiſe as wel by teſtamẽt in writing, as otherwiſe anye acte lawfully executed in his life, al his ſaid lands or hereditaments any of them.

And euery perſon hauing landes or other hereditaments holden of the King in ſocage or of the nature of ſocage tenure in chiefe, and hauing alſo any other lands or hereditaments holden of any other perſon in ſocage or of the nature of ſocage tenure, and not hauing anye hereditaments holden of the King or anye other by knights ſeruice, may from the ſaide time giue and deuiſe as well by teſtament in writting, as otherwiſe by any acte lawfully executed in his life, al and euery of them at his pleaſure, ſauing to the K. all his right of primer ſeaſon and reliefes, and alſo all other rights & dueties for tenure in ſocage or of the nature of ſocage tenure in chiefe, as heretofore hath beene accuſtomed, the ſame to be taken and ſued out of the Kings handes by the perſon to whome any ſuch lands ſhalbe diſpoſed or deuiſed, in like manner as hath beene vſed by any heire or heires before the making of this ſtatute. And ſauing & reſer-

Primer ſeaſon reliefes.

uing

uing alſo fines for alienation of ſuch lands & hereditamẽts holden of the K. in ſocage or of the nature of ſocage tenure in chiefe whereof ſhalbe any alteration of frehold or inheritãce made by will or otherwiſe as is aforeſaid.

Item all perſons hauing lands or other hereditaments of eſtate of inheritance holden of the K. in chief by knights ſeruice, or of the nature of knights ſeruice in chiefe may giue, will or aſſigne, 2. parts of the ſame in 3. parts to be deuided, or elſe aſmuch thereof as ſhal amoũt to the yearely value of two parts of the ſame in 3. parts to be deuided in cetainty & by ſpeciall diuiſions, as it may be knowen in ſeueralty for the aduancement of his wife, preferment of his children, & paimẽt of his debts or otherwiſe at his pleaſure. Sauing to the K. aſwel the wardſhip & primer ſeaſon of as much as ſhall amount to the cleare yearly value of the third part thereof without diminutiõ dower, fraud, couin, charge, or abridgement thereof, as alſo all fines for alienations of all ſuch lands holdẽ of him by knights ſeruice in chief, whereof ſhal be any alteration of freehold or of inheritãce made by will or otherwiſe. And euery perſon hauing lands or tenements of eſtate of inheritance holden of the K. in chief by knights ſeruice, & other lands holden of him or by any other by knights ſeruice or otherwiſe, may giue

or assigne by his testament or otherwise as is aforesaid, 2. parts thereof in 3. parts to be deuided, or els asmuch thereof as shall extend to the yearely value of two parts, or be deuided in certainty. Sauing to the King, as well the wardshippe and primer season of as much as shall amount to the yearely value of the third part, without diminution, &c. As also for all fines for alienation as is aboue seid.

es for nation.

Item euery person holding landes or tenementes onely, of any other then the King by Knightes seruice and other landes and tenements in socage, or of the nature of socage tenure may giue, dispose or assure by testament or otherwise two partes thereof holden by Knightes seruice, as much as shall amount to the full yearely value of two parts, and also all the lands and tenements holden by socage or of the nature of socage tenure at his pleasure. Sauing to the Lorde of the landes and tenements holden by Knights seruice for his wardshippe as much thereof as shall amount to the cleare yearely value of the third part without deminution, &c.

And euery person holding onely of the King by Knightes seruice, but not in chiefe, and also other hereditamentes of others by Knights seruice, and holding also other hereditaments of any other person in socage or of the

the nature of socage tenure, may giue and assure at his last will or otherwise, two partes of that is holden of the King by Knightes seruice and two partes of that is holden of any other person by Knightes seruice, or as much of either of them as shall amount to the full yearely value of two partes, and also all his landes and tenements so holden in socage, or of the tenure of socage tenure, sauing as well to the King the wardship of as much as shall extend to the cleare yearly value of the third part of the same, so holden of him by Knightes seruice without diminution, &c. As also the Lordes of whome any of the saide landes beene holden by Knightes seruice for the wardship as much of the same as shall amount to the cleare yearely value of the third part in maner aboue declared.

And if that thirde part which in any of the causes aboue said, shall come to the King, doe not amount to the cleare yearely value of the full fourth part of the saide hereditamentes, whereof the King shall be intitled to haue the custody or primer season: then the King may take into his handes as much of the other two parts of the said hereditaments as with that of the same hereditaments remaining in his hāds shall make vp the cleare yearely value of the thirde part thereof so to be had to him in title

of wardſhip and primer ſeaſon. And like benefit to be giuen to euery Lord of whome any ſuch hereditament ſhall be holden by knights ſeruice concerning only this third part for title of wardſhip.

Alſo all perſons ſhall ſue their liueries for poſſeſſions, reuerſiions, or remainders, and alſo pay reliefes, & heriots like as they ſhould haue done before the making thereof. And fines for alienation ſhall be paid in the chauncerie vpon writtes of entry in the poſt to bee obtained there, for common recoueries to be ſuffered of any landes holden of the King in chiefe, in like maner as is vſed vpon alienations of lands ſo holden in chiefe by fine or feoffement.

Prouided that in ſuch caſes where fines for alienation ſhall be paid in the Chauncerie for writs of entry in the poſt as is aforeſaid, none other fine ſhall bee paide there for any ſuch writtes. Item where two or more perſons hold of the King by knights ſeruice ioyntly to them and to the heires of one of them, and he that hath the inheritance thereof dieth, his heires being within age, the King ſhall haue the warde and mariage of the bodie of ſuch heire, the like of the freeholder or freeholders of the landes ſo holden by Knightes ſeruice notwithſtanding.

Sa-

Sauing to al women ſuch right & title of dower as they ought to haue of any landes or tenements to bee aſſigned vnto them out of the two parts of the ſaid lands or tenements ſeuered from the third part as is aboue ſaid, & not otherwiſe. And ſauing alſo to the King the reuerſion of all ſuch tenements in iointure, and dower immediately after the death of ſuch tenant, if they ſhall happen to dy, during the nonage of the Kings wards.

Of Mariage. Anno. 32. H. 8.

IT is enacted, that from the firſt day of Iuly in the yeare of our Lord a thouſand fiue hundreth and fortie, all mariages within this Church of England contracted between lawfull perſons, as by this act we declare, all perſons to be lawfull that bee not prohibited by Gods law to mary, ſuch mariages, being contract and ſolemniſed in the face of the church, and conſummate with bodily knowledge of fruite of children or childe being had therein betweene the parties ſo maried, ſhall be deemed and taken to be lawfull, good and diſſoluble, notwithſtanding any precontract of matrimony not conſumate with bodily knowledge either of the perſons ſo maried, or both ſhall haue made with any other before the time

time of contracting that mariage which is solemnized and consumate, or whereof such fruit is ensued or may ensue as afore, and notwithstanding any dispensation, prescription, law or other thing graunted or confirmed by act or otherwise. And that no reuersion or prohibition (Gods law except) shall trouble, impeache any mariage without leuiticall degrees. And that no person shall after the said first day of Iuly aforesaid, be admitted to any of the spirituall courtes, within this the Kings realme or any his other lands and dominions to any processe, plee, or allegation contrarie to this acte.

FINIS.

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